

**CS FOR HOUSE BILL NO. 396 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered: 1/29/92
Referred: Finance**

Sponsor(s): HOUSE JUDICIARY COMMITTEE A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to the crimes of assault, sexual assault, unlawful exploitation of a minor,
2 and misconduct involving weapons; relating to the statute of limitations in criminal offenses;
3 imposing a standard of proof in sentencing proceedings; requiring a 99-year prison term
4 without discretionary parole for first degree murder if the defendant has a prior murder
5 conviction, kills a peace officer, fire fighter, or correctional officer, or commits a torture
6 murder; relating to sentencing of certain first felony offenders; limiting a court's discretion
7 to refer certain criminal cases to a three-judge sentencing panel based upon the
8 defendant's potential for rehabilitation; relating to sentencing and discretionary parole of
9 offenders found to have an exceptional potential for rehabilitation; and amending Alaska
10 Rule of Criminal Procedure 35."**

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 * Section 1. SHORT TITLE. This Act shall be known as the Anti-Violent Crime Act of 1992.

1 * Sec. 2. AS 11.41.200(a) is amended to read:

2 (a) A person commits the crime of assault in the first degree if

3 (1) that person recklessly causes serious physical injury to another by means of
4 a dangerous instrument;

5 (2) with intent to cause serious physical injury to another, the person causes
6 serious physical injury to any person; [OR]

7 (3) the person knowingly engages in conduct that results in serious physical injury
8 to another under circumstances manifesting extreme indifference to the value of human life; or

9 (4) that person recklessly causes serious physical injury to another by
10 repeated assaults using a dangerous instrument, even if each assault individually does not
11 cause serious physical injury.

12 * Sec. 3. AS 11.41.210(a) is amended to read:

13 (a) A person commits the crime of assault in the second degree if

14 (1) with intent to cause physical injury to another person, that person causes
15 physical injury to another person by means of a dangerous instrument. [OR]

16 (2) that person recklessly causes serious physical injury to another person; or

17 (3) that person recklessly causes serious physical injury to another by
18 repeated assaults, even if each assault individually does not cause serious physical injury.

19 * Sec. 4. AS 11.41.220(a) is amended to read:

20 (a) A person commits the crime of assault in the third degree if that person recklessly

21 (1) places another person in fear of imminent serious physical injury by means
22 of a dangerous instrument; [OR]

23 (2) causes physical injury to another person by means of a dangerous instrument;

24 or

25 (3) while being 18 years of age or older

26 (A) causes physical injury to a child under 10 years of age and the
27 injury reasonably requires medical treatment;

28 (B) causes physical injury to a child under 10 years of age on more
29 than one occasion.

30 * Sec. 5. AS 11.41.410(a) is amended to read:

31 (a) An offender [A PERSON] commits the crime of sexual assault in the first degree if

1 (1) the offender [DEFENDANT] engages in sexual penetration with another
2 person without consent of that person;

3 (2) the offender [DEFENDANT] attempts to engage in sexual penetration with
4 another person without consent of that person and causes serious physical injury to that person;
5 or

6 (3) the offender [DEFENDANT] engages in sexual penetration with another
7 person

8 (A) who the offender [DEFENDANT] knows is mentally incapable; and
9 (B) who is entrusted to the offender's [DEFENDANT'S] care
10 (i) by authority of law; or
11 (ii) in a facility or program that is required by law to be licensed
12 by the Department of Health and Social Services; or

13 (4) the offender engages in sexual penetration with a person who the offender
14 knows is unaware that a sexual act is being committed and
15 (A) the offender is a health care worker; and
16 (B) the offense takes place during the course of professional treatment
17 of the victim.

18 * Sec. 6. AS 11.41.420(a) is amended to read:

19 (a) An offender commits the crime of sexual assault in the second degree if

20 (1) the offender engages in sexual contact with another person without consent
21 of that person;

22 (2) the offender engages in sexual contact with a person

23 (A) who the offender knows is mentally incapable; and

24 (B) who is entrusted to the offender's care

25 (i) by authority of law; or

26 (ii) in a facility or program that is required by law to be licensed
27 by the Department of Health and Social Services; [OR]

28 (3) the offender engages in sexual penetration with a person who the offender
29 knows is

30 (A) mentally incapable; [OR]

31 (B) incapacitated; or

1 (C) unaware that a sexual act is being committed; or
2 (4) the offender engages in sexual contact with a person who the offender
3 knows is unaware that a sexual act is being committed and
4 (A) the offender is a health care worker; and
5 (B) the offense takes place during the course of professional treatment
6 of the victim.

7 * Sec. 7. AS 11.41.425(a) is amended to read:

8 (a) An offender commits the crime of sexual assault in the third degree if the offender
9 engages in sexual contact with a person who the offender knows is

10 (1) mentally incapable; [OR]

11 (2) incapacitated; or

12 (3) unaware that a sexual act is being committed.

13 * Sec. 8. AS 11.41.455(a) is amended to read:

14 (a) A person commits the crime of unlawful exploitation of a minor if, in the state and
15 with the intent of producing a live performance, film, audio recording, photograph, negative,
16 slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed
17 in (1) - (7) [(1) - (6)] of this subsection, the person knowingly induces or employs a child under
18 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years
19 of age engaged in, the following actual or simulated conduct:

20 (1) sexual penetration;

21 (2) the lewd touching of another person's genitals, anus, or breast;

22 (3) the lewd touching by another person of the child's genitals, anus, or breast;

23 (4) masturbation;

24 (5) bestiality; [OR]

25 (6) the lewd exhibition of the child's genitals; or

26 (7) sexual masochism or sadism.

27 * Sec. 9. AS 11.41.470 is amended by adding new paragraphs to read:

28 (7) "health care worker" includes a person who is or purports to be an
29 anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist,
30 mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical
31 therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist,

1 psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or
2 a substantially similar position;

3 (8) "sexual act" means sexual penetration or sexual contact.

4 * Sec. 10. AS 11.61.200(a) is amended to read:

5 (a) A person commits the crime of misconduct involving weapons in the first degree if
6 the person

7 (1) knowingly possesses a firearm capable of being concealed on one's person
8 after having been convicted of a felony by a court of this state, a court of the United States, or
9 a court of another state or territory;

10 (2) knowingly sells or transfers a firearm capable of being concealed on one's
11 person to a person who has been convicted of a felony by a court of this state, a court of the
12 United States, or a court of another state or territory;

13 (3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

14 (4) knowingly sells or transfers a firearm to another whose physical or mental
15 condition is substantially impaired as a result of the introduction of an intoxicating liquor or
16 controlled substance into that other person's body;

17 (5) removes, covers, alters, or destroys the manufacturer's serial number on a
18 firearm with intent to render the firearm untraceable;

19 (6) possesses a firearm on which the manufacturer's serial number has been
20 removed, covered, altered, or destroyed, knowing that the serial number has been removed,
21 covered, altered, or destroyed with the intent of rendering the firearm untraceable;

22 (7) violates AS 11.46.320 and, during the violation, possesses on the person a
23 firearm when the person's physical or mental condition is impaired as a result of the introduction
24 of an intoxicating liquor or controlled substance into the person's body;

25 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on
26 premises or in a propelled vehicle in violation of a provision of an order issued under
27 AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive
28 weapon or a deadly weapon, other than an ordinary pocketknife;

29 (9) communicates in person with another in violation of AS 11.56.740 and, during
30 the communication, possesses on the person a defensive weapon or a deadly weapon, other than
31 an ordinary pocketknife; [OR]

1 (10) resides in a dwelling knowing that there is a firearm capable of being
2 concealed on one's person or a prohibited weapon in the dwelling if the person has been
3 convicted of a felony by a court of this state, a court of the United States, or a court of another
4 state or territory, unless the person has written authorization to live in a dwelling in which there
5 is a concealable weapon described in this paragraph from a court of competent jurisdiction or
6 from the head of the law enforcement agency of the community in which the dwelling is located;

7 or

8 (11) discharges a firearm from a propelled vehicle while the vehicle is being
9 operated.

10 * Sec. 11. AS 11.61.200(d) is amended to read:

11 (d) The provisions of (a)(3) and (11) of this section do not apply to a peace officer
12 acting within the scope and authority of the officer's employment.

13 * Sec. 12. AS 11.61.200 is amended by adding a new subsection to read:

14 (g) It is an affirmative defense to a prosecution under (a)(11) of this section that the
15 person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by
16 statute or regulation.

17 * Sec. 13. AS 11.61.210(a) is amended to read:

18 (a) A person commits the crime of misconduct involving weapons in the second degree
19 if the person

20 (1) possesses on the person, or in the interior of a vehicle in which the person is
21 present, a firearm when the person's physical or mental condition is impaired as a result of the
22 introduction of an intoxicating liquor or a controlled substance into the person's body in
23 circumstances other than described in AS 11.61.200(a)(7);

24 (2) discharges a firearm from, on, or across a highway;

25 (3) discharges a firearm with reckless disregard for a risk of damage to property
26 or a risk of physical injury to a person;

27 (4) manufactures, possesses, transports, sells, or transfers metal knuckles; [OR]

28 (5) manufactures, sells, or transfers a switchblade or a gravity knife; or

29 (6) knowingly sells a firearm or a defensive weapon to a person under 18
30 years of age.

31 * Sec. 14. AS 11.61.220(a) is amended to read:

1 (a) A person commits the crime of misconduct involving weapons in the third degree if
2 the person

3 (1) knowingly possesses a deadly weapon, other than an ordinary pocketknife or
4 a defensive weapon, that is concealed on the person;

5 (2) knowingly possesses a loaded firearm on the person in any place where
6 intoxicating liquor is sold for consumption on the premises;

7 (3) being an unemancipated minor under 16 years of age, possesses a firearm
8 without the consent of a parent or guardian of the minor;

9 (4) knowingly possesses a firearm

10 (A) or a defensive weapon within the grounds of or on a parking lot
11 immediately adjacent to a public or private preschool, elementary, junior high, or
12 secondary school [,] without the permission of the chief administrative officer of the
13 school or district or the designee of the chief administrative officer, except that a person
14 21 years of age or older may possess

15 (i) an unloaded firearm in the trunk of a motor vehicle or encased
16 in a closed container in a motor vehicle;

17 (ii) a defensive weapon; or

18 (B) within the grounds of or on a parking lot immediately adjacent to a
19 center, other than a private residence, licensed under AS 47.35.010 - 47.35.075 or
20 recognized by the federal government for the care of children; or

21 (5) possesses or transports a switchblade or a gravity knife.

22 * Sec. 15. AS 12.10.010 is amended to read:

23 Sec. 12.10.010. GENERAL TIME LIMITATIONS. A prosecution for murder may be
24 commenced at any time. Except as otherwise provided by law, a [NO] person may not
25 [SHALL] be prosecuted, tried, or punished for an [ANY] offense other than [, NOT] murder
26 [.] unless the indictment is found or the information or complaint is instituted no later than

27 (1) 10 years after the commission of a felony offense in violation of
28 AS 11.41.120 - 11.41.530 or in violation of AS 11.46.400; or

29 (2) five years after the commission of any other offense [WITHIN FIVE
30 YEARS NEXT AFTER SUCH OFFENSE SHALL HAVE BEEN COMMITTED].

31 * Sec. 16. AS 12.10.020(c) is amended to read:

1 (c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 -
2 11.41.455 [AS 11.41.410 - 11.41.460], AS 11.66.110 - 11.66.130, or former AS 11.41.430, [OR
3 FORMER AS 11.51.130(a)(4),] for an offense committed against a person under the age of 18,
4 [16] may be commenced at any time [WITHIN ONE YEAR AFTER THE CRIME IS
5 REPORTED TO A PEACE OFFICER OR THE PERSON REACHES THE AGE OF 16,
6 WHICHEVER OCCURS FIRST. THIS SUBSECTION DOES NOT EXTEND THE PERIOD
7 OF LIMITATION BY MORE THAN FIVE YEARS].

8 * Sec. 17. AS 12.55.025(e) is amended to read:

9 (e) Except as provided in (g) and (h) of this section, if the defendant has been convicted
10 of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is
11 imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that
12 the imprisonment commences at the expiration of the term imposed by the previous judgment.
13 Nothing in AS 12.55.125(a) limits the court's ability to impose consecutive sentences.

14 * Sec. 18. AS 12.55.025 is amended by adding a new subsection to read:

15 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d), 12.55.155(f),
16 and 12.55.165, the preponderance of the evidence standard of proof applies to sentencing
17 proceedings.

18 * Sec. 19. AS 12.55.125(a) is amended to read:

19 (a) A defendant convicted of murder in the first degree shall be sentenced to a definite
20 term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted
21 of murder in the first degree shall be sentenced to a mandatory term of imprisonment of
22 99 years when

23 (1) the defendant is convicted of the murder of a uniformed or otherwise
24 clearly identified peace officer, fire fighter, or correctional officer who was engaged in the
25 performance of official duties at the time of the murder;

26 (2) the defendant has been previously convicted of

27 (A) murder in the first degree under AS 11.41.100 or former
28 AS 11.15.010 or 11.15.020;

29 (B) murder in the second degree under AS 11.41.110 or former
30 AS 11.15.030; or

31 (C) homicide under the laws of another jurisdiction when the offense

1 of which the defendant was convicted contains elements similar to first degree
2 murder under AS 11.41.100 or second degree murder under AS 11.41.110; or

3 (3) the court finds by clear and convincing evidence that the defendant
4 subjected the murder victim to substantial physical torture.

5 * Sec. 20. AS 12.55.125(h) is amended to read:

6 (h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge
7 except as specifically provided. Nothing in (a) of this section limits the court's discretion to
8 impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person
9 convicted of murder in the first or second degree in circumstances other than those
10 enumerated in (a).

11 * Sec. 21. AS 12.55.125 is amended by adding new subsections to read:

12 (j) A defendant sentenced to a mandatory term of imprisonment of 99 years under (a)
13 of this section may apply for a modification or reduction of sentence under the Alaska Rules of
14 Criminal Procedure after serving one-half of the mandatory term without consideration of good
15 time earned under AS 33.20.010.

16 (k) A first felony offender convicted of an offense for which a presumptive term of
17 imprisonment is not specified under this section may not be sentenced to a term of unsuspended
18 imprisonment that exceeds the presumptive term for a second felony offender convicted of the
19 same crime unless the court finds by clear and convincing evidence that an aggravating factor
20 under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the
21 three judge panel under AS 12.55.165.

22 * Sec. 22. AS 12.55.165 is amended by adding a new subsection to read:

23 (b) In making a determination under (a) of this section, the court may not refer a case to
24 a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a
25 factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21),
26 or (28) is present.

27 * Sec. 23. AS 12.55.175 is amended by adding a new subsection to read:

28 (e) If the three-judge panel determines under (b) of this section that manifest injustice
29 would result from imposition of the presumptive term and the panel also finds that the defendant
30 has an exceptional potential for rehabilitation and that a sentence of less than the presumptive
31 term should be imposed because of the defendant's exceptional potential for rehabilitation, the

1 panel

2 (1) shall sentence the defendant under AS 12.55.125;

3 (2) shall order the defendant under AS 12.55.015 to engage in appropriate
4 programs of rehabilitation; and

5 (3) may provide that the defendant is eligible for discretionary parole under
6 AS 33.16.090 during the second half of the sentence imposed under this subsection if the
7 defendant successfully completes all rehabilitation programs ordered under (2) of this subsection.

8 * Sec. 24. AS 33.16.090(b) is amended to read:

9 (b) Except as provided in (e) of this section, a [A] prisoner is not eligible for
10 discretionary parole during the term of a presumptive sentence, however, a prisoner is eligible
11 for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a)
12 or during the term of a consecutive or partially consecutive presumptive sentence imposed under
13 AS 12.55.025(e) or (g). A prisoner sentenced to a mandatory 99-year term under
14 AS 12.55.125(a) is not eligible for discretionary parole during the entire term.

15 * Sec. 25. AS 33.16.090(c) is amended to read

16 (c) Except as provided in (e) of this section, a [A] prisoner eligible for discretionary
17 parole during a period of sentence enhancement imposed under AS 12.55.155(a) or during a
18 consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g)
19 shall serve the unenhanced portion of the sentence or the initial presumptive sentence before
20 being otherwise eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of
21 this subsection, the sentence for the most serious offense in the case of consecutive or partially
22 consecutive presumptive sentences shall be considered the initial presumptive sentence. The
23 unenhanced sentence or the initial presumptive sentence is considered served for purposes of
24 discretionary parole on the date the unenhanced or initial presumptive sentence is due to expire
25 less good time earned under AS 33.20.010.

26 * Sec. 26. AS 33.16.090 is amended by adding a new subsection to read:

27 (e) Notwithstanding (b) and (c) of this section, a prisoner may be eligible for
28 discretionary parole during the second half of a sentence imposed under AS 12.55.175(e) if the
29 three-judge panel provides under AS 12.55.175(e)(3) that the defendant is eligible for
30 discretionary parole, and the defendant has successfully completed all rehabilitation programs
31 ordered by the three-judge panel under AS 12.55.175(e)(2) if the programs are made available

1 to the defendant by the department.

2 * **Sec. 27. APPLICABILITY OF SECTIONS 15 AND 16.** AS 12.10.010, as amended by sec. 15 of
3 this Act, and AS 12.10.020(c), as amended by sec. 16 of this Act, apply to all offenses committed on
4 or after the effective date of this Act and to all offenses that could have been prosecuted under
5 AS 12.10.010 and 12.10.020 on the day before the effective date of this Act.

6 * **Sec. 28.** AS 12.55.125(j), added by sec. 21 of this Act, has the effect of amending Alaska Rule of
7 Criminal Procedure 35 by permitting a court to reduce or modify a mandatory sentence of imprisonment
8 of 99 years imposed under AS 12.55.125(a), as amended by sec. 19 of this Act, after the defendant has
9 served one-half of the mandatory term without consideration of good time earned under AS 33.20.010.