

**SENATE CS FOR CS FOR HOUSE BILL NO. 396 (JUDICIARY)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 5/10/92**  
**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 is amended by adding new sections to article 2 to read:

5 Sec. 11.61.190. MISCONDUCT INVOLVING WEAPONS IN THE FIRST DEGREE.

6 (a) A person commits the crime of misconduct involving weapons in the first degree if the  
7 person uses or attempts to use a firearm during the commission of an offense under AS  
8 11.71.010 - 11.71.040.

9 (b) Misconduct involving weapons in the first degree is a class A felony.

10 Sec. 11.61.195. MISCONDUCT INVOLVING WEAPONS IN THE SECOND DEGREE.

11 (a) A person commits the crime of misconduct involving weapons in the second degree if the  
12 person knowingly

13 (1) possesses a firearm during the commission of an offense under AS 11.71.010 -  
14 11.71.040; or

15 (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot  
16 immediately adjacent to

17 (A) a public or private preschool, elementary, junior high, or secondary  
18 school without the permission of the chief administrative officer of the school or district  
19 or the designee of the chief administrative officer; or

20 (B) a center, other than a private residence, licensed under AS 47.35.010 -  
21 47.35.075 or recognized by the federal government for the care of children.

22 (b) Misconduct involving weapons in the second degree is a class B felony.

23 \* Sec. 11. AS 11.61.200(a) is amended to read:

24 (a) A person commits the crime of misconduct involving weapons in the third [FIRST]  
25 degree if the person

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

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

- 1 (3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;
- 2 (4) knowingly sells or transfers a firearm to another whose physical or mental
- 3 condition is substantially impaired as a result of the introduction of an intoxicating liquor or
- 4 controlled substance into that other person's body;
- 5 (5) removes, covers, alters, or destroys the manufacturer's serial number on a
- 6 firearm with intent to render the firearm untraceable;
- 7 (6) possesses a firearm on which the manufacturer's serial number has been
- 8 removed, covered, altered, or destroyed, knowing that the serial number has been removed,
- 9 covered, altered, or destroyed with the intent of rendering the firearm untraceable;
- 10 (7) violates AS 11.46.320 and, during the violation, possesses on the person a
- 11 firearm when the person's physical or mental condition is impaired as a result of the introduction
- 12 of an intoxicating liquor or controlled substance into the person's body;
- 13 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on
- 14 premises or in a propelled vehicle in violation of a provision of an order issued under AS
- 15 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon
- 16 or a deadly weapon, other than an ordinary pocketknife.
- 17 (9) communicates in person with another in violation of AS 11.56.740 and, during
- 18 the communication, possesses on the person a defensive weapon or a deadly weapon, other than
- 19 an ordinary pocketknife, [OR]
- 20 (10) resides in a dwelling knowing that there is a firearm capable of being
- 21 concealed on one's person or a prohibited weapon in the dwelling if the person has been
- 22 convicted of a felony by a court of this state, a court of the United States, or a court of another
- 23 state or territory, unless the person has written authorization to live in a dwelling in which there
- 24 is a concealable weapon described in this paragraph from a court of competent jurisdiction or
- 25 from the head of the law enforcement agency of the community in which the dwelling is located;
- 26 or
- 27 (11) discharges a firearm from a propelled vehicle while the vehicle is being
- 28 operated.
- 29 \* Sec. 12. AS 11.61.200(d) is amended to read:
- 30 (d) The provisions of (a)(3) and (11) of this section do not apply to a peace officer
- 31 acting within the scope and authority of the officer's employment.

1 \* Sec. 13. AS 11.61.200(f) is amended to read:

2 (f) Misconduct involving weapons in the third [FIRST] degree is a class C felony.

3 \* Sec. 14. AS 11.61.200 is amended by adding a new subsection to read:

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

7 \* Sec. 15. AS 11.61.210(a) is amended to read:

8 (a) A person commits the crime of misconduct involving weapons in the fourth  
9 [SECOND] degree if the person

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

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

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

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

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

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

21 \* Sec. 16. AS 11.61.210(c) is amended to read:

22 (c) Misconduct involving weapons in the fourth [SECOND] degree is a class A  
23 misdemeanor.

24 \* Sec. 17. AS 11.61.220(a) is amended to read:

25 (a) A person commits the crime of misconduct involving weapons in the fifth [THIRD]  
26 degree if the person

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

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

31 (3) being an unemancipated minor under 16 years of age, possesses a firearm

1 without the consent of a parent or guardian of the minor;

2 (4) knowingly possesses a firearm

3 (A) or a defensive weapon within the grounds of or on a parking lot  
4 immediately adjacent to a public or private preschool, elementary, junior high, or  
5 secondary school [,] without the permission of the chief administrative officer of the  
6 school or district or the designee of the chief administrative officer, except that a person  
7 21 years of age or older may possess

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

10 (ii) a defensive weapon; or

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

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

15 \* Sec. 18. AS 11.61.220(g) is amended to read:

16 (g) Misconduct involving weapons in the fifth [THIRD] degree is a class B  
17 misdemeanor.

18 \* Sec. 19. AS 12.10.010 is amended to read:

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

23 (1) 10 years after the commission of a felony offense in violation of  
24 AS 11.41.120 - 11.41.530 or in violation of AS 11.46.400; or

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

27 \* Sec. 20. AS 12.10.020(c) is amended to read:

28 (c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 -  
29 11.41.455 [AS 11.41.410 - 11.41.460], AS 11.66.110 - 11.66.130, or former AS 11.41.430, [OR  
30 FORMER AS 11.51.130(a)(4),] for an offense committed against a person under the age of 18,  
31 [16] may be commenced at any time [WITHIN ONE YEAR AFTER THE CRIME IS

1 REPORTED TO A PEACE OFFICER OR THE PERSON REACHES THE AGE OF 16,  
2 WHICHEVER OCCURS FIRST. THIS SUBSECTION DOES NOT EXTEND THE PERIOD  
3 OF LIMITATION BY MORE THAN FIVE YEARS].

4 \* Sec. 21. AS 12.55.025(e) is amended to read:

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

10 \* Sec. 22. AS 12.55.025 is amended by adding a new subsection to read:

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

14 \* Sec. 23. AS 12.55.125(a) is amended to read:

15 (a) A defendant convicted of murder in the first degree shall be sentenced to a definite  
16 term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted  
17 of murder in the first degree shall be sentenced to a mandatory term of imprisonment of  
18 99 years when

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

22 (2) the defendant has been previously convicted of

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

25 (B) murder in the second degree under AS 11.41.110 or former  
26 AS 11.15.030; or

27 (C) homicide under the laws of another jurisdiction when the offense  
28 of which the defendant was convicted contains elements similar to first degree  
29 murder under AS 11.41.100 or second degree murder under AS 11.41.110; or

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

1 \* Sec. 24. AS 12.55.125(h) is amended to read:

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

7 \* Sec. 25. AS 12.55.125 is amended by adding new subsections to read:

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

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

18 \* Sec. 26. AS 12.55.155(c)(18) is amended to read.

19 (18) the offense was a crime

20 (A) specified in AS 11.41 and was committed against a spouse, a former  
21 spouse, or a member of the social unit comprised of those living together in the same  
22 dwelling as the defendant; [OR]

23 (B) specified in AS 11.41.410 - 11.41.460 and was committed against a  
24 minor, and the defendant has engaged in the same or similar conduct involving the same  
25 or another victim who was a minor; or

26 (C) specified in AS 11.41.410 - 11.41.425 or 11.41.455, and the  
27 defendant has previously engaged in conduct covered by one of those sections  
28 involving the same or another victim;

29 \* Sec. 27. AS 12.55.165 is amended by adding a new subsection to read:

30 (b) In making a determination under (a) of this section, the court may not refer a case to  
31 a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a

1 factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21),  
2 or (28) is present.

3 \* Sec. 28. AS 12.55.175 is amended by adding a new subsection to read:

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

9 (1) shall sentence the defendant to the presumptive term required under  
10 AS 12.55.125;

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

13 (3) may provide that the defendant is eligible for discretionary parole under AS  
14 33.16.090 during the second half of the sentence imposed under this subsection if the defendant  
15 successfully completes all rehabilitation programs ordered under (2) of this subsection.

16 \* Sec. 29. AS 12.61.120(b) is amended to read:

17 (b) If the defendant is proceeding without counsel in a case involving a charged violation  
18 of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.740, AS 11.56.810 or 11.61.190 - 11.61.210  
19 [11.61.200 - 11.61.210] and the court finds that the defendant may pose a continuing threat to  
20 the victim of or witness to the offense charged, the court shall protect the address and telephone  
21 number of the victim or witness by providing the information only to a person specified by the  
22 court or by imposing other restrictions that the court considers necessary. When an address or  
23 telephone number is released to a person specified by the court under this subsection, that person,  
24 who shall be ordered not to disclose the information to the defendant, shall contact the victim  
25 or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or  
26 witness only in the presence of that person.

27 \* Sec. 30. AS 33.16.090(b) is amended to read:

28 (b) Except as provided in (e) of this section, a [A] prisoner is not eligible for  
29 discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible  
30 for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a)  
31 or during the term of a consecutive or partially consecutive presumptive sentence imposed under

1 AS 12.55.025(e) or (g). A prisoner sentenced to a mandatory 99-year term under  
2 AS 12.55.125(a) is not eligible for discretionary parole during the entire term.

3 \* Sec. 31. AS 33.16.090(c) is amended to read:

4 (c) Except as provided in (e) of this section, a [A] prisoner eligible for discretionary  
5 parole during a period of sentence enhancement imposed under AS 12.55.155(a) or during a  
6 consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g)  
7 shall serve the unenhanced portion of the sentence or the initial presumptive sentence before  
8 being otherwise eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of  
9 this subsection, the sentence for the most serious offense in the case of consecutive or partially  
10 consecutive presumptive sentences shall be considered the initial presumptive sentence. The  
11 unenhanced sentence or the initial presumptive sentence is considered served for purposes of  
12 discretionary parole on the date the unenhanced or initial presumptive sentence is due to expire  
13 less good time earned under AS 33.20.010.

14 \* Sec. 32. AS 33.16.090 is amended by adding a new subsection to read:

15 (e) Notwithstanding (b) and (c) of this section, a prisoner may be eligible for  
16 discretionary parole during the second half of a sentence imposed under AS 12.55.175(e) if the  
17 three-judge panel provides under AS 12.55.175(e)(3) that the defendant is eligible for  
18 discretionary parole, and the defendant has successfully completed all rehabilitation programs  
19 ordered by the three-judge panel under AS 12.55.175(e)(2) if the programs are made available  
20 to the defendant by the department and if the defendant would not constitute a danger to the  
21 public if released on parole.

22 \* Sec. 33. APPLICABILITY OF SECTIONS 19 AND 20. AS 12.10.010, as amended by sec. 19 of  
23 this Act, and AS 12.10.020(c), as amended by sec. 20 of this Act, apply to all offenses committed on  
24 or after the effective date of this Act and to all offenses that could have been prosecuted under  
25 AS 12.10.010 and 12.10.020 on the day before the effective date of this Act.

26 \* Sec. 34. AS 12.55.125(j), added by sec. 25 of this Act, has the effect of amending Alaska Rule of  
27 Criminal Procedure 35 by permitting a court to reduce or modify a mandatory sentence of imprisonment  
28 of 99 years imposed under AS 12.55.125(a), as amended by sec. 23 of this Act, after the defendant has  
29 served one-half of the mandatory term without consideration of good time earned under AS 33.20.010.