

SB

194

SENATE BILL NO. 194

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATORS KELLY, Phillips, Leman, Pearce, Green

Introduced: 1/8/96

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to
2 sentencing for those offenses; and amending Rule 702(a), Alaska Rules of
3 Evidence."

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

5 * Section 1. AS 11.41.110(a) is amended to read:

6 (a) A person commits the crime of murder in the second degree if

7 (1) with intent to cause serious physical injury to another person or
8 knowing that the conduct is substantially certain to cause death or serious physical
9 injury to another person, the person causes the death of any person;

10 (2) the person knowingly engages in conduct that results in the death
11 of another person under circumstances manifesting an extreme indifference to the value
12 of human life; [OR]

13 (3) acting either alone or with one or more persons, the person commits
14 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first

1 degree, sexual assault in the second degree, burglary in the first degree, escape in the
2 first or second degree, or robbery in any degree and, in the course of or in furtherance
3 of that crime, or in immediate flight from that crime, any person causes the death of
4 a person other than one of the participants; or

5 *good* (4) acting for the benefit of, at the direction of, or in association
6 with a criminal street gang, the person commits or attempts to commit a crime
7 that is a felony and, in the course of or in furtherance of that crime or in
8 immediate flight from that crime, any person committing or attempting to commit
9 the crime causes the death of another person other than one of the participants.

10 * Sec. 2. AS 11.61.195(a) is amended to read:

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

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

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

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

20 (B) a center, other than a private residence, licensed under
21 AS 47.33 or AS 47.35 or recognized by the federal government for the care of
22 children; or

23 (3) participates as a member of a criminal street gang and, acting
24 for the benefit of, at the direction of, or in association with a criminal street gang
25 or any of its members, the person knowingly discharges a firearm from a
26 propelled vehicle while the vehicle is being operated and under circumstances
27 manifesting a reckless disregard for a risk of damage to property or a risk of
28 physical injury to a person. *Adds more elements than can prove*

29 * Sec. 3. AS 11.61.200(a) is amended to read:

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

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(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

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

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

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

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

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

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

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

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

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person

1 has been convicted of a felony by a court of this state, a court of the United States,
2 or a court of another state or territory, unless the person has written authorization to
3 live in a dwelling in which there is a concealable weapon described in this paragraph
4 from a court of competent jurisdiction or from the head of the law enforcement agency
5 of the community in which the dwelling is located; or

6 (11) discharges a firearm from a propelled vehicle while the vehicle is
7 being operated in circumstances other than described in AS 11.61.195(a)(3).

8 * Sec. 4. AS 11.61.210(a) is amended to read:

9 (a) A person commits the crime of misconduct involving weapons in the fourth
10 degree if the person

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

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

16 (3) discharges a firearm with reckless disregard for a risk of damage
17 to property or a risk of physical injury to a person in circumstances other than
18 described in AS 11.61.195(a)(3);

19 (4) manufactures, possesses, transports, sells, or transfers metal
20 knuckles;

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

22 (6) knowingly sells a firearm or a defensive weapon to a person under
23 18 years of age;

24 (7) other than a preschool, elementary, junior high, or secondary school
25 student, knowingly possesses a deadly weapon or a defensive weapon, without the
26 permission of the chief administrative officer of the school or district or the designee
27 of the chief administrative officer, within the buildings of, on the grounds of, or on the
28 school parking lot of a public or private preschool, elementary, junior high, or
29 secondary school or while participating in a school-sponsored event, except that a
30 person 21 years of age or older may possess

31 (A) a deadly weapon, other than a loaded firearm, in the trunk

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of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; [OR]

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession; or

(9) participating as a member of a criminal street gang and acting for the benefit of, at the direction of, or in association with a criminal street gang or any of its members, knowingly remains in a propelled vehicle after another criminal street gang member present in the vehicle has violated AS 11.61.195(a)(3).

• Sec. 5. AS 11.61 is amended by adding new sections to read:

ARTICLE 3. CRIMINAL STREET GANGS.

Sec. 11.61.300. PARTICIPATION IN CRIMINAL STREET GANG. (a) A

person commits the crime of participation in a criminal street gang if the person

(1) actively participates in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity; and

(2) knowingly engages in conduct to promote, further, or assist in any conduct by a member of that gang that constitutes an offense punishable as a felony.

SZS Law Book

1 (b) In this section, "pattern of criminal gang activity" means the commission
2 or attempted commission, within the preceding three years, for the benefit of, at the
3 direction of, or in association with the members of the criminal street gang, two or
4 more offenses punishable as a felony.

5 (c) Participation in a criminal street gang is a class C felony.

6 Sec. 11.61.305. FORFEITURE OF PROPERTY UPON CONVICTION. (a)
7 Upon conviction under AS 11.41.110(a)(4), AS 11.61.195(a), or 11.61.300, the
8 following shall be forfeited to the state:

9 (1) a deadly weapon and ammunition that may be used with the deadly
10 weapon that

11 (A) is owned or possessed by a person who actively participated
12 in a criminal street gang during the criminal gang activity that provided the
13 basis for the offender's conviction; or

14 (B) was acquired during the course of a pattern of criminal gang
15 activity for which the offender was convicted;

16 (2) the property of the offender who led, organized, supervised, or
17 managed the criminal street gang

18 (A) constituting, or derived from, proceeds the offender
19 obtained, directly or indirectly, as the result of the criminal gang activity that
20 provided the basis for the offender's conviction; and ~~or~~ }

21 (B) used, or intended to be used, in any manner or part, to
22 commit, or to facilitate the commission of, the criminal gang activity.

23 * Sec. 6. AS 11.81.900(b) is amended by adding a new paragraph to read:

24 (59) "criminal street gang" means a group of three or more persons

25 (A) who have in common a name or identifying sign, symbol,
26 tattoo or other physical marking, style of dress, or use of hand signs; and

27 (B) who, individually, jointly, or in combination, have
28 committed or attempted to commit, within the preceding three years, for the
29 benefit of, at the direction of, or in association with the group, two or more
30 offenses under any of, or any combination of, the following

31 (i) AS 11.41; or

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(ii) a felony offense.

• Sec. 7. AS 12.25 is amended by adding a new section to read:

Sec. 12.25.034. ARREST WITHOUT WARRANT FOR MISDEMEANOR OFFENSE INVOLVING CRIMINAL STREET GANG MEMBERSHIP. A peace officer may arrest a person without a warrant, whether or not the offense is committed in the presence of the officer, when the officer has probable cause to believe that the person to be arrested has violated AS 11.61.210(a)(9), if the violation is alleged to have occurred less than eight hours before the time of arrest.

• Sec. 8. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING TO CRIMINAL STREET GANG ACTIVITY. (a) In an action or proceeding under AS 11.41.110(a)(4), AS 11.61.195(a)(3), 11.61.210(a)(9), or 11.61.300 - 11.61.305, expert testimony is admissible to show particular conduct, status, and customs indicative of criminal street gangs, including

Constitutional

- (1) common characteristics of persons who are members of criminal street gangs;
- (2) rivalries between specific criminal street gangs;
- (3) common practices and operations of criminal street gangs and the members of those gangs;
- (4) social customs and behavior of members of criminal street gangs;
- (5) terminology used by members of criminal street gangs;
- (6) codes of conduct of particular criminal street gangs; and
- (7) the types of crimes that are likely to be committed by a particular criminal street gang or by criminal street gangs in general.

(b) In this section, "criminal street gang" has the meaning given in AS 11.81.900(b).

• Sec. 9. AS 12.55.125(b) is amended to read:

(b) A defendant convicted of
(1) [MURDER IN THE SECOND DEGREE.] attempted murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to

1 a definite term of imprisonment of at least five years but not more than 99 years;
2 (2) murder in the second degree under AS 11.41.110(a)(1) - (3) shall
3 be sentenced to a definite term of imprisonment of at least five years but not
4 more than 99 years;

5 (3) murder in the second degree under AS 11.41.110(a)(4) shall be
6 sentenced to a definite term of imprisonment of at least seven years but not more
7 than 99 years.

8 * Sec. 10. AS 12.45.037, added by sec. 8 of this Act, has the effect of amending Rule
9 702(a), Alaska Rules of Evidence, to allow the admissibility of expert testimony to show
10 criminal gang characteristics, activity, and practices by a person having that specialized
11 knowledge based on the person's knowledge, skill, experience, training, or education.

12 * Sec. 11. APPLICABILITY. This Act applies to an act that occurs on or after the
13 effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB194

Revision Date: _____
 Title: An Act Relating to Offenses Associated
with Criminal Street Gangs.
 Sponsor: Senator Kelly et al
 Requestor: Senate (JUD)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

From the limited information available regarding street gangs, the Division cannot accurately assess the impact this bill would have on programs. However, it appears that it will be minimal.

Prepared by: L. Diane Worley *[Signature]* Phone: 465-3191
 Division: Family & Youth Services Date: 01/16/96

Approved by Commissioner: Karen Priddy *[Signature]* Date: 1/15/96
 Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 194

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to offenses with criminal street gangs
and the sentences for those offenses." BRU: Criminal Division
 Sponsor: Senator Kelly Component: Criminal Division
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill criminalizes participation in criminal street gangs. In so doing, the bill establishes several elements that would have to be proved in order to obtain a conviction. For this reason, the Department of Law believes that the bill's requirements are too complicated and provide too many defenses, making prosecution problematic. The bill also has the unintended potential effect of reducing the penalties for some gang related activities, which would otherwise be charged under accomplice liability provisions of current law.

Consequently, there will probably not be many prosecutions under the bill's provisions, if it is enacted. On those few occasions when the provisions are used, prosecution will be difficult and expensive.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/16/96
 Date: 1/16/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 194

Revision Date: _____
Title: "An Act relating to offenses associated with criminal street gangs..."
Sponsor: Senator Kelly
Requestor: Senate Judiciary

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There will undoubtedly be a fiscal impact to OPA on our criminal section and on our contractors, due to increased arrests and increased criminal litigation. It is not possible at this time to quantify this impact.

Prepared by Brant McGee, Public Advocate
Division Office of Public Advocacy

Phone 274-1684
Date _____

Approved by Commissioner: Mark Boyer
Agency Administration

Date 1/17/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 194

Revision Date: _____
 Title: "An Act relating to offenses associated with criminal street gangs..."
 Sponsor: Senator Kelly
 Requestor: (S) Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Public Defender Agency.

Prepared by: John B. Salemi, Director
 Division: Public Defender Agency

Phone: (907) 264-4412
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 1/16/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSSB 194

Revision Date: February 28, 1996-
Title: Crimes associated with criminal street gangs
Sponsor: Senator Kelly
Requestor: S. Judiciary

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments
COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers

Prepared By: Lt. Dan Lowden
Division: Alaska State Troopers

Phone: 465-5505
Date: February 28, 1996

Approved by Commissioner: *Ronald L. Otte*
Agency: Ronald L. Otte, Department of Public Safety

Date: 2/28/96

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2/23/96

CS FOR SENATE BILL NO. 194()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS KELLY, Phillips, Lemon, Pearce, Green, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to
2 sentencing for those offenses; relating to the offenses of murder in the second
3 degree, an unclassified felony, misconduct involving weapons in the first degree,
4 a class A felony, and misconduct involving weapons in the third degree, a class
5 C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for
6 an effective date."

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

8 * Section J. AS 11.41.110(a) is amended to read:

- 9 (u) A person commits the crime of murder in the second degree if
- 10 (1) with intent to cause serious physical injury to another person or
- 11 knowing that the conduct is substantially certain to cause death or serious physical injury
- 12 to another person, the person causes the death of any person;
- 13 (2) the person knowingly engages in conduct that results in the death of

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1 another person under circumstances manifesting an extreme indifference to the value of
2 human life; (OR)

3 (3) acting either alone or with one or more persons, the person commits
4 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first
5 degree, sexual assault in the second degree, burglary in the first degree, escape in the
6 first or second degree, (OR) robbery in any degree, or misconduct involving a
7 controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
8 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime, or in
9 immediate flight from that crime, any person causes the death of a person other than one
10 of the participants; or

11 (4) acting with a criminal street gang, the person commits or
12 attempts to commit a crime that is a felony and, in the course of or in furtherance
13 of that crime or in immediate flight from that crime, any person causes the death
14 of a person other than one of the participants.

15 * Sec. 2. AS 11.61 is amended by adding new sections to article 1 to read:

16 Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

17 (a) A person commits the crime of recruiting a gang member in the first degree if the
18 person uses or threatens the use of force against a person or property to induce a person
19 to participate in a criminal street gang or to commit a crime on behalf of a criminal street
20 gang.

21 (b) Recruiting a gang member in the first degree is a class C felony.

22 Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND
23 DEGREE. (a) A person commits the crime of recruiting a gang member in the second
24 degree if the person is 18 years of age or older and, without force or the threat of force,
25 encourages or recruits a person who is under 18 years of age and at least three years
26 younger than the offerer to participate in a criminal street gang.

27 (b) Recruiting a gang member in the second degree is a class A misdemeanor.

28 * Sec. 3. AS 11.61.190(a) is amended to read:

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

31 (1) uses or attempts to use a firearm during the commission of an offense
32 under AS 11.71.010 - 11.71.040; or

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(2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

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

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

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

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

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

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

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

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

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

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

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1 (9) communicates in person with another in violation of AS 11.56.740
2 and, during the communication, possesses on the person a defensive weapon or a deadly
3 weapon, other than an ordinary pocketknife;

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

11 (11) discharges a firearm from a propelled vehicle while the vehicle is
12 being operated in circumstances other than described in AS 11.61.190(a)(2).

13 * Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

14 (59) "criminal street gang" means a group of three or more persons
15 (A) who have in common a name or identifying sign, symbol,
16 tattoo or other physical marking, style of dress, or use of hand signs; and
17 (B) who, individually, jointly, or in combination, have committed
18 or attempted to commit, within the preceding three years, for the benefit of, at
19 the direction of, or in association with the group, two or more offenses under any
20 of, or any combination of, the following:

- 21 (i) AS 11.41;
- 22 (ii) AS 11.46; or
- 23 (iii) a felony offense.

24 * Sec. 6. AS 12.45 is amended by adding a new section to read:

25 Sec 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING TO
26 CRIMINAL STREET GANG ACTIVITY. (a) In a criminal prosecution, expert
27 testimony is admissible to show, in regard to a specific criminal street gang or criminal
28 street gangs whose conduct is relevant to the case.

- 29 (1) common characteristics of persons who are members of the criminal
30 street gang or criminal street gangs;
- 31 (2) rivalries between specific criminal street gangs;
- 32 (3) common practices and operations of the criminal street gang or

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- 1 criminal street gangs and the members of those gangs;
- 2 (4) social customs and behavior of members of the criminal street gang
- 3 or the criminal street gangs;
- 4 (5) terminology used by members of the criminal street gang or the
- 5 criminal street gangs;
- 6 (6) codes of conduct of the particular criminal street gang or criminal
- 7 street gangs; and
- 8 (7) the types of crimes that are likely to be committed by the particular
- 9 criminal street gang.
- 10 (b) In this section, "criminal street gang" has the meaning given in
- 11 AS 11.81.900(b).
- 12 * Sec. 7. AS 12.55.015(a) is amended to read:
- 13 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
- 14 sentence on a defendant convicted of an offense, may singly or in combination
- 15 (1) impose a
- 16 (A) fine when authorized by law and as provided in
- 17 AS 12.55.035; or
- 18 (B) [A] day fine when authorized by law and as provided in
- 19 AS 12.55.036, if the court does not impose a term of periodic or continuous
- 20 imprisonment or place the defendant on probation;
- 21 (2) order the defendant to be placed on probation under conditions
- 22 specified by the court that may include provision for active supervision;
- 23 (3) impose a definite term of periodic imprisonment;
- 24 (4) impose a definite term of continuous imprisonment;
- 25 (5) order the defendant to make restitution under AS 12.55.045;
- 26 (6) order the defendant to carry out a continuous or periodic program of
- 27 community work under AS 12.55.055;
- 28 (7) suspend execution of all or a portion of the sentence imposed under
- 29 AS 12.55.080;
- 30 (8) suspend imposition of sentence under AS 12.55.085;
- 31 (9) order the forfeiture to the commissioner of public safety of a deadly
- 32 weapon that was in the actual possession of or used by the defendant during the

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1 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

2 (10) order the defendant, while incarcerated, to participate in or comply
3 with the treatment plan of a rehabilitation program that is related to the defendant's
4 offense or to the defendant's rehabilitation if the program is made available to the
5 defendant by the Department of Corrections;

6 (11) order the forfeiture to the state of a motor vehicle, weapon,
7 electronic communication device, or money or other valuables, used in or obtained
8 through an offense that was committed for the benefit of, at the direction of, or in
9 association with a criminal street gang.

10 * Sec. 8. AS 12.55 is amended by adding a new section to read:

11 Sec. 12.55.137. PENALTIES FOR GANG ACTIVITIES PUNISHABLE AS
12 MISDEMEANORS. (a) If a person commits an offense that would be a class B
13 misdemeanor and the person committed the offense for the benefit of, at the direction of,
14 or in association with a criminal street gang, the offense is a class A misdemeanor.

15 (b) If a person commits an offense that would be a class A misdemeanor and the
16 person committed the offense for the benefit of, at the direction of, or in association with
17 a criminal street gang, the offense is a class C felony.

18 * Sec. 9. AS 12.55.155(c) is amended by adding a new paragraph to read:

19 (29) the defendant committed the offense for the benefit of, at the
20 direction of, or in association with a criminal street gang.

21 * Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

22 (14) "criminal street gang" has the meaning given in AS 11.81.900(b).

23 * Sec. 11. AS 12.45.037, added by sec. 6 of this Act, has the effect of amending Rule 702(a),
24 Alaska Rules of Evidence, to allow the admissibility of expert testimony to show criminal gang
25 characteristics, activity, and practices by a person having that specialized knowledge based on
26 the person's knowledge, skill, experience, training, or education.

27 * Sec. 12. APPLICABILITY. This Act applies to an act that occurs on or after the effective
28 date of this Act, except that references to previous offenses refer to acts occurring before, on,
29 or after the effective date of this Act.

30 * Sec. 13. This Act takes effect September 1, 1996.

Senator Taylor--

The "U" version of the CS is the most recent version and contains only technical changes to the last draft version "R". It does not include any substantive changes.

I have been working hard to accomodate everyone on this bill. The A.G.'s office is happy, the Anchorage Police Department is happy, and I believe everyone is happy except for the Public Defenders. It is as close to consensus as I can get.

Jack Chenoweth, Annie Carpeneti, and myself will be in Anchorage to testify. Thanks for all of you help.

T. J. Jancow

Sherman

• Make it a crime to recruit a gang member if the person uses or threatens to use force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a street gang. This crime would constitute a class C felony. This crime of

9-LS1313R
Chenoweth
2/22/96

CS FOR SENATE BILL NO. 194()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS KELLY, Phillips, Leman, Pearce, Green, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to
2 sentencing for those offenses; relating to the offenses of murder in the second
3 degree, an unclassified felony, misconduct involving weapons in the first degree,
4 a class A felony, and misconduct involving weapons in the third degree, a class
5 C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for
6 an effective date."

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

8 * Section 1. AS 11.41.110(a) is amended to read:

- 9 (a) A person commits the crime of murder in the second degree if
- 10 (1) with intent to cause serious physical injury to another person or
- 11 knowing that the conduct is substantially certain to cause death or serious physical injury
- 12 to another person, the person causes the death of any person;
- 13 (2) the person knowingly engages in conduct that results in the death of

1 another person under circumstances manifesting an extreme indifference to the value of
2 human life; [OR]

3 (3) acting either alone or with one or more persons, the person commits
4 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first
5 degree, sexual assault in the second degree, burglary in the first degree, escape in the
6 first or second degree, [OR] robbery in any degree, or misconduct involving a
7 controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
8 11.71.040(a)(1) or (2) and, in the course of or in furtherance of th t crime, or in
9 immediate flight from that crime, any person causes the death of a person other than one
10 of the participants; or

11 (4) acting with a criminal street gang, the person commits or
12 attempts to commit a crime that is a felony and, in the course of or in furtherance
13 of that crime or in immediate flight from that crime, any person causes the death
14 of another person other than one of the participants.

15 * Sec. 2. AS 11.61 is amended by adding new sections to article 1 to read:

16 Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

17 (a) A person commits the crime of recruiting a gang member in the first degree if the
18 person uses or threatens the use of force against a person or property to induce another
19 person to participate in a criminal street gang or to commit a crime on behalf of a
20 criminal street gang.

21 (b) Recruiting a gang member in the first degree is a class C felony.

22 Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND
23 DEGREE. (a) A person commits the crime of recruiting a gang member in the second
24 degree if the person is over 18 years of age and, without force or the threat of force,
25 encourages or recruits a person who is under 18 years of age and at least three years
26 younger than the offender to participate in a criminal street gang.

27 (b) Recruiting a gang member in the second degree is a class A misdemeanor.

28 * Sec. 3. AS 11.61.190(a) is amended to read:

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

31 (1) uses or attempts to use a firearm during the commission of an offense
32 under AS 11.71.010 - 11.71.040; or

1 (2) discharges a firearm from a propelled vehicle while the vehicle
2 is being operated and under circumstances manifesting substantial and unjustifiable
3 risk of physical injury to a person or damage to property.

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

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

7 (1) knowingly possesses a firearm capable of being concealed on one's
8 person after having been convicted of a felony or adjudicated a delinquent minor for
9 conduct that would constitute a felony if committed by an adult by a court of this state,
10 a court of the United States, or a court of another state or territory;

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

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

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

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

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

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

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

1 (9) communicates in person with another in violation of AS 11.56.740
2 and, during the communication, possesses on the person a defensive weapon or a deadly
3 weapon, other than an ordinary pocketknife;

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

11 (11) discharges a firearm from a propelled vehicle while the vehicle is
12 being operated in circumstances other than described in AS 11.61.190(a)(2).

13 * Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

14 (59) "criminal street gang" means a group of three or more persons

15 (A) who have in common a name or identifying sign, symbol,
16 tattoo or other physical marking, style of dress, or use of hand signs; and

17 (B) who, individually, jointly, or in combination, have committed
18 or attempted to commit, within the preceding three years, for the benefit of, at
19 the direction of, or in association with the group, two or more offenses under any
20 of, or any combination of, the following:

21 (i) AS 11.41; or

22 (ii) a felony offense.

23 * Sec. 6. AS 12.45 is amended by adding a new section to read:

24 Sec. 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING TO
25 CRIMINAL STREET GANG ACTIVITY. (a) In a criminal prosecution, expert
26 testimony is admissible to show, in regard to a specific criminal street gang or criminal
27 street gangs whose conduct is relevant to the prosecution,

28 (1) common characteristics of persons who are members of the criminal
29 street gang or criminal street gangs;

30 (2) rivalries between specific criminal street gangs;

31 (3) common practices and operations of the criminal street gang or
32 criminal street gangs and the members of those gangs;

1 (4) social customs and behavior of members of the criminal street gang
2 or the criminal street gangs;

3 (5) terminology used by members of the criminal street gang or the
4 criminal street gangs;

5 (c) codes of conduct of the particular criminal street gang or criminal
6 street gangs; and

7 (7) the types of crimes that are likely to be committed by the particular
8 criminal street gang.

9 (b) In this section, "criminal street gang" has the meaning given in
10 AS 11.81.900(b).

11 * Sec. 7. AS 12.55.015(a) is amended to read:

12 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
13 sentence on a defendant convicted of an offense, may singly or in combination

14 (1) impose a

15 (A) fine when authorized by law and as provided in
16 AS 12.55.035; or

17 (B) [A] day fine when authorized by law and as provided in
18 AS 12.55.036, if the court does not impose a term of periodic or continuous
19 imprisonment or place the defendant on probation;

20 (2) order the defendant to be placed on probation under conditions
21 specified by the court that may include provision for active supervision;

22 (3) impose a definite term of periodic imprisonment;

23 (4) impose a definite term of continuous imprisonment;

24 (5) order the defendant to make restitution under AS 12.55.045;

25 (6) order the defendant to carry out a continuous or periodic program of
26 community work under AS 12.55.055;

27 (7) suspend execution of all or a portion of the sentence imposed under
28 AS 12.55.080;

29 (8) suspend imposition of sentence under AS 12.55.085;

30 (9) order the forfeiture to the commissioner of public safety of a deadly
31 weapon that was in the actual possession of or used by the defendant during the
32 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

1 (10) order the defendant, while incarcerated, to participate in or comply
 2 with the treatment plan of a rehabilitation program that is related to the defendant's
 3 offense or to the defendant's rehabilitation if the program is made available to the
 4 defendant by the Department of Corrections;

5 (11) order the forfeiture to the state of a motor vehicle, weapon,
 6 electronic communication device, or money or other valuables, used in or obtained
 7 through an offense that was committed for the benefit of, at the direction of, or in
 8 association with a criminal street gang.

9 * Sec. 8. AS 12.55 is amended by adding a new section to read:

10 Sec. 12.55.137. PENALTIES FOR GANG ACTIVITIES PUNISHABLE AS
 11 MISDEMEANORS. (a) If a person commits an offense that would be a class B
 12 misdemeanor and the person committed the offense for the benefit of, at the direction of,
 13 or in association with a criminal street gang, the offense is a class A misdemeanor.

14 (b) If a person commits an offense that would be a class A misdemeanor and the
 15 person committed the offense for the benefit of, at the direction of, or in association with
 16 a criminal street gang, the offense is a class C felony.

17 * Sec. 9. AS 12.55.155(c) is amended by adding a new paragraph to read:

18 (29) the defendant committed the offense for the benefit of, at the
 19 direction of, or in association with a criminal street gang.

20 * Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

21 (14) "criminal street gang" has the meaning given in AS 11.81.010(b).

22 * Sec. 11. AS 12.45.037, added by sec. 6 of this Act, has the effect of amending Rule 702(a),
 23 Alaska Rules of Evidence, to allow the admissibility of expert testimony to show criminal gang
 24 characteristics, activity, and practices by a person having that specialized knowledge based on
 25 the person's knowledge, skill, experience, training, or education.

26 * Sec. 12. APPLICABILITY. This Act applies to an act that occurs on or after the effective
 27 date of this Act, except that references to previous offenses refer to acts occurring before, on,
 28 or after the effective date of this Act.

29 * Sec. 13. This Act takes effect September 1, 1996.

CS FOR SENATE BILL NO. 194(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS KELLY, Phillips, Leman, Pearce, Green, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to
2 sentencing for those offenses; relating to the offenses of murder in the second
3 degree, an unclassified felony, misconduct involving weapons in the first degree,
4 a class A felony, and misconduct involving weapons in the third degree, a class
5 C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for
6 an effective date."

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

8 * Section 1. AS 11.41.110(a) is amended to read:

- 9 (a) A person commits the crime of murder in the second degree if
- 10 (1) with intent to cause serious physical injury to another person or
11 knowing that the conduct is substantially certain to cause death or serious physical injury
12 to another person, the person causes the death of any person;
- 13 (2) the person knowingly engages in conduct that results in the death of

1 another person under circumstances manifesting an extreme indifference to the value of
2 human life; [OR]

3 (3) acting either alone or with one or more persons, the person commits
4 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first
5 degree, sexual assault in the second degree, burglary in the first degree, escape in the
6 first or second degree, [OR] robbery in any degree, or misconduct involving a
7 controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
8 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime, or in
9 immediate flight from that crime, any person causes the death of a person other than one
10 of the participants; or

11 (4) acting with a criminal street gang, the person commits or
12 attempts to commit a crime that is a felony and, in the course of or in furtherance
13 of that crime or in immediate flight from that crime, any person causes the death
14 of a person other than one of the participants.

15 * Sec. 2. AS 11.61 is amended by adding new sections to article 1 to read:

16 Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

17 (a) A person commits the crime of recruiting a gang member in the first degree if the
18 person uses or threatens the use of force against a person or property to induce a person
19 to participate in a criminal street gang or to commit a crime on behalf of a criminal street
20 gang.

21 (b) Recruiting a gang member in the first degree is a class C felony.

22 Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND
23 DEGREE. (a) A person commits the crime of recruiting a gang member in the second
24 degree if the person is 18 years of age or older and, without force or the threat of force,
25 encourages or recruits a person who is under 18 years of age and at least three years
26 younger than the offender to participate in a criminal street gang.

27 (b) Recruiting a gang member in the second degree is a class A misdemeanor.

28 * Sec. 3. AS 11.61.190(a) is amended to read:

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

31 (1) uses or attempts to use a firearm during the commission of an offense
32 under AS 11.71.010 - 11.71.040; or

1 (2) discharges a firearm from a propelled vehicle while the vehicle
2 is being operated and under circumstances manifesting substantial and unjustifiable
3 risk of physical injury to a person or damage to property.

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

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

7 (1) knowingly possesses a firearm capable of being concealed on one's
8 person after having been convicted of a felony or adjudicated a delinquent minor for
9 conduct that would constitute a felony if committed by an adult by a court of this state,
10 a court of the United States, or a court of another state or territory;

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

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

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

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

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

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

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

1 (9) communicates in person with another in violation of AS 11.56.740
2 and, during the communication, possesses on the person a defensive weapon or a deadly
3 weapon, other than an ordinary pocketknife;

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

11 (11) discharges a firearm from a propelled vehicle while the vehicle is
12 being operated in circumstances other than described in AS 11.61.190(a)(2).

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17 (B) who, individually, jointly, or in combination, have committed
18 or attempted to commit, within the preceding three years, for the benefit of, at
19 the direction of, or in association with the group, two or more offenses under any
20 of, or any combination of, the following:

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28 street gangs whose conduct is relevant to the case,

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30 street gang or criminal street gangs;

31 (2) rivalries between specific criminal street gangs;

32 (3) common practices and operations of the criminal street gang or

1 criminal street gangs and the members of those gangs;

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3 or the criminal street gangs;

4 (5) terminology used by members of the criminal street gang or the
5 criminal street gangs;

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7 street gangs; and

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9 criminal street gang.

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11 AS 11.81.900(b).

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14 sentence on a defendant convicted of an offense, may singly or in combination

15 (1) impose a

16 (A) fine when authorized by law and as provided in
17 AS 12.55.035; or

18 (B) [A] day fine when authorized by law and as provided in
19 AS 12.55.036, if the court does not impose a term of periodic or continuous
20 imprisonment or place the defendant on probation;

21 (2) order the defendant to be placed on probation under conditions
22 specified by the court that may include provision for active supervision;

23 (3) impose a definite term of periodic imprisonment;

24 (4) impose a definite term of continuous imprisonment;

25 (5) order the defendant to make restitution under AS 12.55.045;

26 (6) order the defendant to carry out a continuous or periodic program of
27 community work under AS 12.55.055;

28 (7) suspend execution of all or a portion of the sentence imposed under
29 AS 12.55.080;

30 (8) suspend imposition of sentence under AS 12.55.085;

31 (9) order the forfeiture to the commissioner of public safety of a deadly
32 weapon that was in the actual possession of or used by the defendant during the

1 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

2 (10) order the defendant, while incarcerated, to participate in or comply
3 with the treatment plan of a rehabilitation program that is related to the defendant's
4 offense or to the defendant's rehabilitation if the program is made available to the
5 defendant by the Department of Corrections;

6 (11) order the forfeiture to the state of a motor vehicle, weapon,
7 electronic communication device, or money or other valuables, used in or obtained
8 through an offense that was committed for the benefit of, at the direction of, or in
9 association with a criminal street gang.

10 * Sec. 8. AS 12.55 is amended by adding a new section to read:

11 Sec. 12.55.137. PENALTIES FOR GANG ACTIVITIES PUNISHABLE AS
12 MISDEMEANORS. (a) If a person commits an offense that would be a class B
13 misdemeanor and the person committed the offense for the benefit of, at the direction of,
14 or in association with a criminal street gang, the offense is a class A misdemeanor.

15 (b) If a person commits an offense that would be a class A misdemeanor and the
16 person committed the offense for the benefit of, at the direction of, or in association with
17 a criminal street gang, the offense is a class C felony.

18 * Sec. 9. AS 12.55.155(c) is amended by adding a new paragraph to read:

19 (29) the defendant committed the offense for the benefit of, at the
20 direction of, or in association with a criminal street gang.

21 * Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

22 (14) "criminal street gang" has the meaning given in AS 11.81.900(b).

23 * Sec. 11. AS 12.45.037, added by sec. 6 of this Act, has the effect of amending Rule 702(a),
24 Alaska Rules of Evidence, to allow the admissibility of expert testimony to show criminal gang
25 characteristics, activity, and practices by a person having that specialized knowledge based on
26 the person's knowledge, skill, experience, training, or education.

27 * Sec. 12. APPLICABILITY. This Act applies to an act that occurs on or after the effective
28 date of this Act, except that references to previous offenses refer to acts occurring before, on,
29 or after the effective date of this Act.

30 * Sec. 13. This Act takes effect September 1, 1996.

MEMBER

TENTH ALASKA LEGISLATURE
 ELEVENTH ALASKA LEGISLATURE
 TWELFTH ALASKA LEGISLATURE
 THIRTEENTH ALASKA LEGISLATURE
 FOURTEENTH ALASKA LEGISLATURE
 FIFTEENTH ALASKA LEGISLATURE
 SIXTEENTH ALASKA LEGISLATURE
 EIGHTEENTH ALASKA LEGISLATURE
 NINETEENTH ALASKA LEGISLATURE

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Sponsor Statement
CCSB 194

"An Act relating to offenses associated with criminal street gangs, and to sentencing for those offenses; relating to the offenses of murder in the second degree, an unclassified felony, misconduct involving weapons in the first degree, a class A felony, and misconduct involving weapons in the third degree, a class C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for an effective date."

SB 194 was introduced in response to the rapid escalation of violent gang-related crime in Anchorage and throughout Alaska. In 1995, more than four gang-related murders were committed in Anchorage as well as numerous gang-related hold-ups and drive by shootings. Presently there are over 463 identified gang members in Anchorage alone. The central purpose behind the introduction of SB 194 is to give law enforcement and prosecutors the tools necessary to deal effectively with the increased presence of gangs in Alaska. The committee substitute now before you represents consensus language reached after many discussions with the Attorney General's Office.

Specifically, CSSB 194 would:

- Amend the crime of murder in the second degree to include a "felony murder" provision for a death resulting from a drug offense or a gang related shooting. Under current law, if a bystander is shot in a shoot-out between drug-dealers attempting to complete a drug deal or in a crime committed by a gang or gangs, the shooter can claim he was firing in self defense. This provision would eliminate a claim of self-defense when an innocent bystander is injured and would hold drug-dealers and gang members accountable for their violent and dangerous behavior.

- Make it a crime to recruit a gang member if the person uses or threatens to use force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a street gang. This crime would constitute a class C felony. This crime of

recruiting would also be extended to recruitment without force by a person 18 years or older who encourages a person under the age of 18 to participate in a gang. Recruitment in the second degree would constitute a class A misdemeanor.

- Elevates the crime of weapons misconduct--applicable to drive-by shootings-- to a class A felony. (5 to 10 years).

- Allows for expert testimony relating to criminal street gang activity such that in a criminal prosecution, expert testimony is admissible to show gang affiliation, custom, rivalry, and other characteristics of gangs. This section will give prosecutors the ability to introduce evidence of gang affiliation.

- Provides for the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang.

- Allows for gang membership to be considered as an aggravator for sentencing purposes in felonies. Further, SB 194 would elevate misdemeanors committed for the benefit of, at the direction of, or in association with a criminal street gang. For example, a B misdemeanor committed for the benefit of, at the direction of, or in association with a criminal street gang would be elevated to an A misdemeanor. Similarly, a class A misdemeanor would be elevated to a class C felony.

The CS for SB 194 now before this Committee is the result of much negotiation and deliberation between the Attorney General's Office and my office. The CS represents a consensus approach to dealing with the menace of gangs and gang-related violence in Alaska. I ask for your support of this legislation so we can move forward in sending the message that gang violence will not be tolerated in this state.

MEMBER

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Sponsor Statement
SB 194

"An Act relating to offenses associated with criminal street gangs, and to sentencing for those offenses; and amending Rule 702(a), Alaska Rules of Evidence."

SB 194 was introduced in response to the rapid escalation of violent gang-related crime in Anchorage and throughout Alaska. In 1995, more than four gang-related murders were committed in Anchorage as well as numerous gang-related hold-ups and drive by shootings. Presently there are over 463 identified gang members in Anchorage alone. The central purpose behind the introduction of SB 194 is to give law enforcers the tools necessary to deal effectively with the increased presence of gangs in Alaska.

Specifically, SB 194 would:

* Amend the crime of murder in the second degree to include a "felony murder" provision for a death resulting from a gang related shooting, and set the minimum sentence to 7 years, with a 99 year maximum. Under current law, if a bystander is shot in a shoot-out between gangs, the shooter can claim he was firing in self defense. This provision would eliminate a claim of self-defense when an innocent bystander is injured and would hold gang members accountable for their violent and dangerous behavior.

* Allow police to arrest all identified members of a gang involved in a drive by shooting for a Class A misdemeanor for remaining in the car after the shooting. Currently, when police apprehend a vehicle identified in a drive by shooting if they cannot identify the person who pulled the trigger they cannot arrest or detain the passengers in the car. This provision will allow the police to detain all persons in the car while investigating to determine who was the triggerman.

* Elevate the crime of drive-by shooting committed by a gang member from a Class C Felony (0 to 5 years) to a Class B Felony (5 to 10 years).

* Create as a new crime participation in a "criminal street gang," as modeled after the California Penal Code punishable as a Class C felony, and provide for forfeiture of gang property upon conviction of a gang-related crime.