



# LAWS OF ALASKA

1980

**Source**

HCS CSSB 511

**Chapter No.**

102

## AN ACT

Relating to the criminal laws of the state; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 20, 1980  
Actual Effective Date: June 21, 1980

AN ACT

Relating to the criminal laws of the state; and providing  
for an effective date.

\* Section 1. AS 11.31.100 is amended by adding a new subsection to read:

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony.

\* Sec. 2. AS 11.31.110 is amended by adding a new subsection to read:

(d) If the crime solicited is an unclassified crime described in a state law which is not part of this title and no provision for punishment of a solicitation to commit the crime is specified, the punishment for the solicitation is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime solicited is punishable by an indeterminate or life term, the solicitation is a class A felony.

\* Sec. 3. AS 11.41.115(e) is amended to read:

(e) Nothing in (a) or [,] (b) [, OR (d)] of this section precludes

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1 a prosecution for or conviction of manslaughter or any other crime not  
2 specifically precluded.

3 \* Sec. 4. AS 11.41.210(a) is repealed and re-enacted to read:

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

5 (1) with intent to cause physical injury to another person,  
6 he causes physical injury to any person by means of a dangerous instru-  
7 ment;

8 (2) with intent to cause physical injury to another person,  
9 he causes serious physical injury to any person; or

10 (3) he recklessly causes serious physical injury to another  
11 person by means of a dangerous instrument.

12 \* Sec. 5. AS 11.41 is amended by adding a new section to read:

13 Sec. 11.41.220. ASSAULT IN THE THIRD DEGREE. (a) A person commits  
14 the crime of assault in the third degree if he recklessly places another  
15 person in fear of imminent serious physical injury by means of a dan-  
16 gerous instrument.

17 (b) Assault in the third degree is a class C felony.

18 \* Sec. 6. AS 11.41.230 is amended to read:

19 Sec. 11.41.230. ASSAULT IN THE FOURTH [THIRD] DEGREE. (a) A  
20 person commits the crime of assault in the fourth [THIRD] degree if

21 (1) he [INTENTIONALLY OR] recklessly causes physical injury  
22 to another person;

23 (2) with criminal negligence he causes physical injury to  
24 another person by means of a dangerous instrument; or

25 (3) by words or other conduct he intentionally places another  
26 person in fear of imminent physical injury.

27 (b) Assault in the fourth [THIRD] degree is a class A misdemeanor.

28 \* Sec. 7. AS 11.41.300(a)(1)(C) is amended to read:

29 (C) inflict physical injury upon him or sexually as-

1 sault him or place him or a third person in apprehension that any  
2 person will be subjected to serious physical injury or sexual as-  
3 sault;

4 \* Sec. 8. AS 11.41.410(a)(3) is amended to read:

5 (3) being 16 years of age or older, he engages in sexual  
6 penetration with another person under 13 years of age or aids, induces,  
7 causes or encourages a person under 13 years of age to engage in sex-  
8 ual penetration with another person; or

9 \* Sec. 9. AS 11.41.440(a) is amended to read:

0 (a) A person commits the crime of sexual abuse of a minor if,  
1 being 16 years of age or older, he [ENGAGES IN]

2 (1) engages in sexual penetration with a person who is under  
3 16 years of age but 13 years of age or older or aids, induces, causes  
4 or encourages a person under 16 years of age but 13 years of age or  
5 older to engage in sexual penetration with another person; [OR]

6 (2) engages in sexual contact with a person who is under 13  
7 years of age or aids, induces, causes or encourages a person under  
8 13 years of age to engage in sexual contact with another person; or

9 (3) aids, induces, causes or encourages a person who is un-  
0 der 16 years of age to engage in conduct described in AS 11.41.455(a)-  
1 (2) - (6).

2 \* Sec. 10. AS 11.46.210(b) is amended to read:

3 (b) It is not a defense to a prosecution based on theft by fail-  
4 ure to make required disposition of funds received or held [UNDER THIS  
5 SECTION] that it may be impossible to identify particular property as  
6 belonging to the victim at the time of the defendant's failure to make  
7 the required payment or disposition.

8 \* Sec. 11. AS 11.46.220 is amended to read:

9 Sec. 11.46.220. CONCEALMENT OF MERCHANDISE. (a) A person commits

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1 the crime of concealment of merchandise if without authority he know-  
2 ingly conceals on or about his person the merchandise of a commercial  
3 establishment, not purchased by the person, while still upon the premises  
4 of the commercial establishment, with intent to deprive the owner of the  
5 merchandise or with intent to appropriate the merchandise.

6 (b) Merchandise found concealed upon or about the person which has  
7 not been purchased by the person is prima facie evidence of a knowing  
8 concealment.

9 (c) Concealment of merchandise is

10 (1) a class C felony if the merchandise is a firearm or the  
11 value of the merchandise is \$500 or more;

12 (2) a class A misdemeanor if the value of the merchandise is  
13 \$50 or more but less than \$500;

14 (3) a class B misdemeanor if the value of the merchandise is  
15 less than \$50.

16 \* Sec. 12. AS 11.46.320(a)(1) is amended to read:

17 (1) on land [REAL PROPERTY] with intent to commit a crime on  
18 the land [THAT REAL PROPERTY]; or

19 \* Sec. 13. AS 11.46.482(a)(4) is amended to read:

20 (4) he drives, tows away, or takes the propelled vehicle of  
21 another and the vehicle or any other property of another is damaged or  
22 the owner incurs reasonable expenses as a result of the loss of use of  
23 the vehicle in a total amount of \$500 or more [DAMAGES THE VEHICLE IN AN  
24 AMOUNT OF \$500 OR MORE OR CAUSES THE OWNER TO INCUR REASONABLE EXPENSES  
25 OF \$500 OR MORE AS A RESULT OF THE LOSS OF USE OF THE VEHICLE].

26 \* Sec. 14. AS 11.46.600 is repealed and re-enacted to read:

27 Sec. 11.46.600. SCHEME TO DEFRAUD. (a) A person commits the  
28 crime of scheme to defraud if he engages in conduct constituting a  
29 scheme

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1 (1) to defraud five or more persons or to obtain property or  
2 services from five or more persons by false or fraudulent pretense, rep-  
3 resentation, or promise and obtains property or services in accordance  
4 with the scheme; or

5 (2) to defraud one or more persons of \$10,000 or to obtain  
6 \$10,000 or more from one or more persons by false or fraudulent pretense,  
7 representation, or promise and obtains property or services in accor-  
8 dance with the scheme.

9 (b) Scheme to defraud is a class B felony.

10 \* Sec. 15. AS 11.46.620(d) is repealed and re-enacted to read:

11 (d) Misapplication of property is

12 (1) a class C felony if the value of the property misapplied  
13 is \$500 or more;

14 (2) a class A misdemeanor if the value of the property mis-  
15 applied is less than \$500.

16 \* Sec. 16. AS 11.51.130(a) is amended to read:

17 (a) A person commits the crime of contributing to the delinquency  
18 of a minor if, being 19 years of age or older, he

19 (1) aids, induces, causes, or encourages [PERMITS] a child  
20 under 18 years of age to do any act prohibited by state law;

21 (2) [INDUCES, CAUSES, OR PERMITS A CHILD UNDER 18 YEARS OF  
22 AGE TO PARTICIPATE IN UNLAWFUL GAMBLING;]

23 (3) aids, induces, causes, or encourages [PERMITS] a child  
24 under 18 years of age to enter or remain in the same room in a building  
25 where the unlawful sale of a drug occurs; or

26 (4) engages in sexual contact with a child under 16 years of  
27 age but 13 years of age or older; or

28 (5) aids, induces, causes, or encourages a child under 16  
29 years of age to be absent from the custody of a parent, guardian, or cus-

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1 today or to be repeatedly absent from school, without just cause.

2 \* Sec. 17. AS 11.56.310(a)(1)(B) is amended to read:

3 (B) official detention for [ON A CHARGE OF] a felony or  
4 for extradition; or

5 \* Sec. 18. AS 11.56.320 is repealed and re-enacted to read:

6 Sec. 11.56.320. ESCAPE IN THE THIRD DEGREE. (a) A person commits  
7 the crime of escape in the third degree if he

8 (1) removes himself from official detention during any lawful  
9 movement or activity incident to confinement within a correctional  
10 facility for a misdemeanor; or

11 (2) violates AS 11.56.340 or 11.56.350 and leaves or attempts  
12 to leave the state.

13 (b) Escape in the third degree is a class C felony.

14 \* Sec. 19. AS 11.56.330(a) is amended to read:

15 (a) A person commits the crime of escape in the fourth degree if,  
16 without lawful authority, he removes himself from official detention for  
17 [ON A CHARGE OF] a misdemeanor [OR IF HE VIOLATES AS 11.56.340 OR 11.56.  
18 350 AND LEAVES OR ATTEMPTS TO LEAVE THE STATE].

19 \* Sec. 20. AS 11.56.370(a) is amended to read:

20 (a) A public servant who is required by law to have charge of a  
21 person arrested for, charged with or convicted of a crime commits the  
22 crime of permitting an escape if with criminal negligence he permits a  
23 person under official detention to escape.

24 \* Sec. 21. AS 11.61.210(a)(1) is amended to read:

25 (1) possesses on his person a firearm while under the in-  
26 fluence [HIS PHYSICAL OR MENTAL CONDITION IS SUBSTANTIALLY IMPAIRED AS A  
27 RESULT OF THE INTRODUCTION] of an intoxicating liquor or drug [INTO HIS  
28 BODY];

29 \* Sec. 22. AS 11.61.210 is amended by adding a new subsection to read:

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1 (c) For purposes of (a)(1) of this section, a person is under the  
2 influence of an intoxicating liquor or drug when, as a result of the  
3 introduction of an intoxicating liquor or drug into his body, his physi-  
4 cal or mental abilities are impaired so that he no longer has the  
5 ability to possess a firearm with the caution characteristic of a sober  
6 person of ordinary prudence under the same or similar circumstances.

7 \* Sec. 23. AS 11.61.220(b)(1) is amended to read:

8 (1) in his dwelling or on land owned or leased by him [PRO-  
9 PERTY] appurtenant to his dwelling; or

10 \* Sec. 24. AS 11.66.230(a) is amended to read:

11 (a) A person commits the crime of possession of gambling records  
12 in the first degree if, with knowledge of its contents or character, he  
13 possesses a gambling record used or intended to be [OF A KIND COMMONLY]  
14 used in the operation or promotion of an unlawful gambling enterprise.

15 \* Sec. 25. AS 11.81.300 is repealed and re-enacted to read:

16 Sec. 11.81.300. JUSTIFICATION: DEFENSE. Except as otherwise  
17 specified in this title, justification as provided in AS 11.81.320 -  
18 11.81.430 is a defense.

19 \* Sec. 26. AS 11.81.400 is amended by adding new subsections to read:

20 (c) The exception in (a)(2) of this section is an affirmative  
21 defense to a prosecution for an offense arising out of the use of force  
22 in resisting an arrest under the circumstances specified.

23 (d) In this section, "unlawful" means that there was no probable  
24 cause to arrest. The issue whether there was probable cause to arrest,  
25 when an affirmative defense is raised under (c) of this section, is a  
26 question of law to be established by the court sitting without a jury.

27 \* Sec. 27. AS 11.81.600(b) is repealed and re-enacted to read:

28 (b) A person is not guilty of an offense unless he acts with a  
29 culpable mental state, except that no culpable mental state must be

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proved

(1) if the description of the offense does not specify a culpable mental state and the offense is

(A) a violation; or

(B) designated as one of "strict liability"; or

(2) if a legislative intent to dispense with the culpable mental state requirement is present.

\* Sec. 28. AS 11.81.620(b) is amended to read:

(b) A person is not relieved of criminal liability for conduct because he engages in the conduct under a mistaken belief of fact, unless

(1) the factual mistake is a reasonable one that negates the culpable mental state required for the commission of the offense;

(2) the provision of law defining the offense or a related provision of law expressly provides that the factual mistake constitutes a defense or exemption; or

(3) the factual mistake is a reasonable one [OF A KIND] that supports a defense of justification as provided in AS 11.81.320 - 11.81.430.

\* Sec. 29. AS 11.81.900(b)(11) is amended to read:

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury [; "DANGEROUS INSTRUMENT" INCLUDES "DEADLY WEAPON"];

\* Sec. 30. AS 11.81.900(b)(12) is amended to read:

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which he knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the

1 direction of another person or in the direction in which another person  
2 is believed to be and intentionally placing another person in fear of  
3 imminent serious physical injury by means of a dangerous instrument;

4 \* Sec. 31. AS 11.81.900(b)(21) is repealed and re-enacted to read:

5 (21) "firearm" means a weapon, including a pistol, revolver,  
6 rifle, or shotgun, whether loaded or unloaded, operable or inoperable,  
7 designed for discharging a shot capable of causing death or serious  
8 physical injury;

9 \* Sec. 32. AS 11.81.900(b)(49) is amended to read:

10 (49) "serious physical injury" means physical injury which  
11 creates a substantial risk of death or which causes serious and pro-  
12 tracted disfigurement, protracted impairment of health, or protracted  
13 loss or impairment of the function of a body member or [BODILY] organ,  
14 or physical injury which unlawfully terminates a pregnancy;

15 \* Sec. 33. AS 12.25.030(b) is amended to read:

16 (b) In addition to the authority granted under (a) of this section,  
17 a peace officer without a warrant may arrest a person when he has reason-  
18 able cause for believing that the person has committed assault in the  
19 fourth [THIRD] degree under AS 11.41.230(a)(1) against a member of the  
20 person's household.

21 \* Sec. 34. AS 12.25.180 is amended to read:

22 Sec. 12.25.180. WHEN PEACE OFFICER HAS OPTION TO TAKE PERSON  
23 BEFORE JUDGE OR MAGISTRATE. (a) When a person is stopped or contacted  
24 by a peace officer for the commission of a misdemeanor [OR AN INFRAC-  
25 TION] or the violation of a municipal ordinance, he may, in the discre-  
26 tion of the contacting peace officer, be issued a citation instead of  
27 being taken before a judge or magistrate under AS 12.25.150, unless

28 (1) the person does not furnish satisfactory evidence of  
29 identity;

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(2) the contacting officer has reasonable and probable cause to believe the person is a danger to himself or others;

(3) the crime for which the person is contacted is one involving violence or harm to another person or to property; or

(4) the person asks to be taken before a judge or magistrate under AS 12.25.150.

(b) When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, he shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

(1) the person does not furnish satisfactory evidence of identity; or

(2) the person refuses to accept the citation or to give his written promise to appear as provided for under AS 12.25.190(c).

\* Sec. 35. AS 12.30 is amended by adding a new section to read:

Sec. 12.30.025. RELEASE BEFORE TRIAL IN CASES INVOLVING DOMESTIC VIOLENCE. (a) In determining the conditions of release under AS 12.30.020 in cases involving domestic violence, the court shall consider the following conditions and impose one or more conditions it considers reasonably necessary to protect the alleged victim of the domestic violence, including ordering the defendant

- (1) not to subject the victim to further domestic violence;
- (2) to vacate the home of the victim;
- (3) not to contact the victim other than through counsel;
- (4) to engage in personal or family counseling;
- (5) to refrain from the consumption of alcohol or the use of drugs.

(b) As used in this section, "domestic violence" means a crime specified in AS 11.41 committed against a spouse, a former spouse, or a

1 member of the social unit comprised of those living together in the same  
2 dwelling as the defendant.

3 \* Sec. 36. AS 12.30.040(b) is amended to read:

4 (b) Notwithstanding the provisions of (a) of this section, if the  
5 offense a person has been convicted of is murder in the first degree,  
6 robbery in the first degree, kidnapping, or sexual assault in the first  
7 degree under AS 11.41.410(a)(1) [FIRST DEGREE MURDER, ARMED ROBBERY, KID-  
8 NAPPING, OR RAPE (AS DEFINED IN AS 11.15.130)], he may not be released on  
9 bail either before sentencing or pending appeal.

10 \* Sec. 37. AS 12.55.015(b)(3) is amended to read:

11 (3) sentences [A SENTENCE] of lesser severity have been re-  
12 peatedly [HAS BEEN] imposed for substantially similar offenses in the  
13 past and have proven ineffective in deterring the defendant from further  
14 criminal conduct.

15 \* Sec. 38. AS 12.55.045(b) is amended to read:

16 (b) [BEFORE THE COURT MAY SENTENCE A DEFENDANT TO A PROGRAM OF  
17 RESTITUTION, THE VICTIM MUST BE GIVEN NOTICE THAT RESTITUTION MAY BE  
18 ORDERED.] An order of restitution under this section does not limit any  
19 civil liability of the defendant arising from his conduct.

20 \* Sec. 39. AS 12.55.155(c)(8) is amended to read:

21 (8) the defendant has a criminal history consisting of prior  
22 convictions for offenses, including misdemeanors, that involved aggra-  
23 vated or repeated instances of assaultive behavior [ONE OR MORE CONVIC-  
24 TIONS FOR MISDEMEANORS HAVING ASSAULT AS A NECESSARY ELEMENT];

25 \* Sec. 40. AS 12.55.155(c) is amended by adding new paragraphs to read:

26 (15) the defendant has three or more prior felony convictions;

27 (16) the defendant's criminal conduct was designed to obtain  
28 substantial pecuniary gain and the risk of prosecution and punishment  
29 for the conduct is slight;

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1 (17) the offense was one of a continuing series of criminal  
2 offenses committed in furtherance of illegal business activities from  
3 which the defendant derives a major portion of his income;

4 (18) the offense was a crime specified in AS 11.41 and was  
5 committed against a spouse, a former spouse, or a member of the social  
6 unit comprised of those living together in the same dwelling as the  
7 defendant.

8 \* Sec. 41. AS 12.55.155(d) is amended by adding a new paragraph to read:

9 (13) the facts surrounding the commission of the offense and  
10 any previous offenses by the defendant establish that the harm caused by  
11 the defendant's conduct is consistently minor and inconsistent with the  
12 imposition of a substantial period of imprisonment.

13 \* Sec. 42. AS 12.80 is amended by adding a new section to read:

14 Sec. 12.80.040. VIOLATIONS AND INFRACTIONS. Except as provided in  
15 AS 11.81.900(b)(55) and AS 28.35.230(d), all laws of the state relating  
16 to misdemeanors apply to violations and infractions, including the power  
17 of peace officers, the jurisdiction of courts and the periods for com-  
18 mencing actions and for bringing a case to trial.

19 \* Sec. 43. AS 28.35.135(a) is amended to read:

20 (a) No person may knowingly make a false affidavit, statement, or  
21 representation, or affirm falsely with respect to a matter or fact  
22 required to be set out under this title, nor may the person use a name  
23 other than his true name. A person convicted of violating this section  
24 is guilty of unsworn falsification [PERJURY] and is punishable as pre-  
25 scribed by law.

26 \* Sec. 44. AS 11.41.115(d) and AS 11.81.610(a) are repealed.

27 \* Sec. 45. This Act takes effect immediately in accordance with AS 01.10  
28 070(c).