



# LAWS OF ALASKA

1996

**Source**  
CSSB 194(JUD)

**Chapter No.**  
60

## 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.

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** June 11, 1996  
**Actual Effective Date:** September 1, 1996

AN ACT

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

6

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

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

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

12 (2) the person knowingly engages in conduct that results in the death

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1 of another person under circumstances manifesting an extreme indifference to the value  
2 of 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),  
8 or 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  
10 one 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  
17 DEGREE. (a) A person commits the crime of recruiting a gang member in the first  
18 degree if the person uses or threatens the use of force against a person or property to  
19 induce a person to participate in a criminal street gang or to commit a crime on behalf  
20 of a 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  
24 second degree if the person is 18 years of age or older and, without force or the threat  
25 of force, encourages or recruits a person who is under 18 years of age and at least  
26 three years 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

1 offense under AS 11.71.010 - 11.71.040; or

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

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

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

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

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

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

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

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

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

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

30 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining  
31 unlawfully on premises or in a propelled vehicle in violation of a provision of an order

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1 issued under AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the  
2 person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

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

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

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

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

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

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

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

23 (i) AS 11.41;

24 (ii) AS 11.46; or

25 (iii) a felony offense.

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

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

31 (1) common characteristics of persons who are members of the criminal

1 street gang or criminal street gangs;

2 (2) rivalries between specific criminal street gangs;

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

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

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

9 (6) codes of conduct of the particular criminal street gang or criminal  
10 street gangs; and

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

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

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

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

18 (1) impose a

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

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

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

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

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

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

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

31 (7) suspend execution of all or a portion of the sentence imposed under

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1 AS 12.55.080;

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

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

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

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

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

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

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

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

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

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

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

27 \* Sec. 11. AS 12.45.037, added by sec. 6 of this Act, has the effect of amending Rule  
28 702(a), Alaska Rules of Evidence, to allow the admissibility of expert testimony to show  
29 criminal gang characteristics, activity, and practices by a person having that specialized  
30 knowledge based on the person's knowledge, skill, experience, training, or education.

31 \* Sec. 12. APPLICABILITY. This Act applies to an act that occurs on or after the

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- 1 effective date of this Act, except that references to previous offenses refer to acts occurring
- 2 before, on, or after the effective date of this Act.
- 3 \* Sec. 13. This Act takes effect September 1, 1996.