

CS FOR HOUSE BILL NO. 14(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/8/19

Referred: Judiciary

Sponsor(s): REPRESENTATIVES LINCOLN, Claman, Fields, Spohnholz, Tarr, Tuck, Zulkosky, Hopkins, Drummond, Kreiss-Tomkins, LeDoux

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to assault in the first degree; relating to sex offenses; relating to the**
2 **definition of 'dangerous instrument'; and providing for an aggravating factor at**
3 **sentencing for strangulation that results in unconsciousness."**

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

5 * **Section 1.** AS 11.41.200(a) is amended to read:

6 (a) A person commits the crime of assault in the first degree if
7 (1) that person recklessly causes serious physical injury to another by
8 means of a dangerous instrument;
9 (2) with intent to cause serious physical injury to another, the person
10 causes serious physical injury to any person;
11 (3) the person knowingly engages in conduct that results in serious
12 physical injury to another under circumstances manifesting extreme indifference to the
13 value of human life; [OR]
14 (4) that person recklessly causes serious physical injury to another by

1 repeated assaults using a dangerous instrument, even if each assault individually does
2 not cause serious physical injury; or

3 **(5) that person knowingly causes another to become unconscious**
4 **by means of a dangerous instrument; in this paragraph, "dangerous instrument"**
5 **has the meaning given in AS 11.81.900(b)(15)(B).**

6 * **Sec. 2.** AS 11.81.900(b)(15) is amended to read:

7 (15) "dangerous instrument" means

8 (A) any deadly weapon or anything that, under the
9 circumstances in which it is used, attempted to be used, or threatened to be
10 used, is capable of causing death or serious physical injury; or

11 (B) hands, other body parts, or other objects when used to
12 impede normal breathing or circulation of blood by applying pressure on the
13 throat or neck or obstructing the nose or mouth;

14 * **Sec. 3.** AS 11.81.900(b)(60) is amended to read:

15 (60) "sexual contact" means

16 (A) the defendant's

17 (i) knowingly touching, directly or through clothing, the
18 victim's genitals, anus, or female breast; [OR]

19 (ii) knowingly causing the victim to touch, directly or
20 through clothing, the defendant's or victim's genitals, anus, or female
21 breast; or

22 **(iii) knowingly causing the victim to come into**
23 **contact with ejaculate;**

24 (B) but "sexual contact" does not include acts

25 (i) that may reasonably be construed to be normal
26 caretaker responsibilities for a child, interactions with a child, or
27 affection for a child;

28 (ii) performed for the purpose of administering a
29 recognized and lawful form of treatment that is reasonably adapted to
30 promoting the physical or mental health of the person being treated; or

31 (iii) that are a necessary part of a search of a person committed to the custody

of the Department of Corrections or the Department of Health and Social Services;

* **Sec. 4.** AS 12.55.155(c) is amended to read:

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, homelessness, consumption of alcohol or drugs, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking a presumptive range under this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated assaultive behavior, repeated instances of assaultive behavior, repeated instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a combination of assaultive behavior and cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5); in this paragraph, "aggravated assaultive behavior" means assault that is a felony under AS 11.41, or a similar provision in another jurisdiction;

(9) the defendant knew that the offense involved more than one victim;

1 (10) the conduct constituting the offense was among the most serious
2 conduct included in the definition of the offense;

3 (11) the defendant committed the offense under an agreement that the
4 defendant either pay or be paid for the commission of the offense, and the pecuniary
5 incentive was beyond that inherent in the offense itself;

6 (12) the defendant was on release under AS 12.30 for another felony
7 charge or conviction or for a misdemeanor charge or conviction having assault as a
8 necessary element;

9 (13) the defendant knowingly directed the conduct constituting the
10 offense at an active officer of the court or at an active or former judicial officer,
11 prosecuting attorney, law enforcement officer, correctional employee, firefighter,
12 emergency medical technician, paramedic, ambulance attendant, or other emergency
13 responder during or because of the exercise of official duties;

14 (14) the defendant was a member of an organized group of five or
15 more persons, and the offense was committed to further the criminal objectives of the
16 group;

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

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

21 (17) the offense was one of a continuing series of criminal offenses
22 committed in furtherance of illegal business activities from which the defendant
23 derives a major portion of the defendant's income;

24 (18) the offense was a felony

25 (A) specified in AS 11.41 and was committed against a spouse,
26 a former spouse, or a member of the social unit made up of those living
27 together in the same dwelling as the defendant;

28 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
29 has engaged in the same or other conduct prohibited by a provision of
30 AS 11.41.410 - 11.41.460 involving the same or another victim;

31 (C) specified in AS 11.41 that is a crime involving domestic

1 violence and was committed in the physical presence or hearing of a child
 2 under 16 years of age who was, at the time of the offense, living within the
 3 residence of the victim, the residence of the perpetrator, or the residence where
 4 the crime involving domestic violence occurred;

5 (D) specified in AS 11.41 and was committed against a person
 6 with whom the defendant has a dating relationship or with whom the defendant
 7 has engaged in a sexual relationship; or

8 (E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and
 9 the defendant was 10 or more years older than the victim;

10 (19) the defendant's prior criminal history includes an adjudication as a
 11 delinquent for conduct that would have been a felony if committed by an adult;

12 (20) the defendant was on furlough under AS 33.30 or on parole or
 13 probation for another felony charge or conviction that would be considered a prior
 14 felony conviction under AS 12.55.145(a)(1)(B);

15 (21) the defendant has a criminal history of repeated instances of
 16 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
 17 similar in nature to the offense for which the defendant is being sentenced under this
 18 section;

19 (22) the defendant knowingly directed the conduct constituting the
 20 offense at a victim because of that person's race, sex, color, creed, physical or mental
 21 disability, ancestry, or national origin;

22 (23) the defendant is convicted of an offense specified in AS 11.71 and

23 (A) the offense involved the delivery of a controlled substance
 24 under circumstances manifesting an intent to distribute the substance as part of
 25 a commercial enterprise; or

26 (B) at the time of the conduct resulting in the conviction, the
 27 defendant was caring for or assisting in the care of a child under 10 years of
 28 age;

29 (24) the defendant is convicted of an offense specified in AS 11.71 and
 30 the offense involved the transportation of controlled substances into the state;

31 (25) the defendant is convicted of an offense specified in AS 11.71 and

1 the offense involved large quantities of a controlled substance;

2 (26) the defendant is convicted of an offense specified in AS 11.71 and
3 the offense involved the distribution of a controlled substance that had been
4 adulterated with a toxic substance;

5 (27) the defendant, being 18 years of age or older,

6 (A) is legally accountable under AS 11.16.110(2) for the
7 conduct of a person who, at the time the offense was committed, was under 18
8 years of age and at least three years younger than the defendant; or

9 (B) is aided or abetted in planning or committing the offense by
10 a person who, at the time the offense was committed, was under 18 years of
11 age and at least three years younger than the defendant;

12 (28) the victim of the offense is a person who provided testimony or
13 evidence related to a prior offense committed by the defendant;

14 (29) the defendant committed the offense for the benefit of, at the
15 direction of, or in association with a criminal street gang;

16 (30) the defendant is convicted of an offense specified in AS 11.41.410
17 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
18 the victim in furtherance of the offense with the intent to make the victim
19 incapacitated; in this paragraph, "incapacitated" has the meaning given in
20 AS 11.41.470;

21 (31) the defendant's prior criminal history includes convictions for five
22 or more crimes in this or another jurisdiction that are class A misdemeanors under the
23 law of this state, or having elements similar to a class A misdemeanor; two or more
24 convictions arising out of a single continuous episode are considered a single
25 conviction; however, an offense is not a part of a continuous episode if committed
26 while attempting to escape or resist arrest or if it is an assault on a uniformed or
27 otherwise clearly identified peace officer or correctional employee; notice and denial
28 of convictions are governed by AS 12.55.145(b) - (d);

29 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the
30 offense occurred on school grounds, on a school bus, at a school-sponsored event, or
31 in the administrative offices of a school district if students are educated at that office;

1 in this paragraph,

2 (A) "school bus" has the meaning given in AS 11.71.900;

3 (B) "school district" has the meaning given in AS 47.07.063;

4 (C) "school grounds" has the meaning given in AS 11.71.900;

5 (33) the offense was a felony specified in AS 11.41.410 - 11.41.455,
6 the defendant had been previously diagnosed as having or having tested positive for
7 HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the
8 victim to a risk or a fear that the offense could result in the transmission of HIV or
9 AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in
10 AS 18.15.310;

11 (34) the defendant committed the offense on, or to affect persons or
12 property on, the premises of a recognized shelter or facility providing services to
13 victims of domestic violence or sexual assault;

14 (35) the defendant knowingly directed the conduct constituting the
15 offense at a victim because that person was 65 years of age or older;

16 (36) the defendant committed the offense at a health care facility and
17 knowingly directed the conduct constituting the offense at a medical professional
18 during or because of the medical professional's exercise of professional duties; in this
19 paragraph,

20 (A) "health care facility" has the meaning given in
21 AS 18.07.111;

22 (B) "medical professional" has the meaning given in
23 AS 12.55.135(k);

24 **(37) the defendant knowingly caused the victim to become**
25 **unconscious by means of a dangerous instrument; in this paragraph, "dangerous**
26 **instrument" has the meaning given in AS 11.81.900(b)(15)(B).**

27 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 APPLICABILITY. AS 11.41.200(a), as amended by sec. 1 of this Act,
30 AS 11.81.900(b)(15), as amended by sec. 2 of this Act, AS 11.81.900(b)(60), as amended by
31 sec. 3 of this Act, and AS 12.55.155(c), as amended by sec. 4 of this Act, apply to offenses

1 committed on or after the effective date of this Act.