

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 12(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/6/19

Referred: Finance

Sponsor(s): SENATORS MICCICHE, Hughes

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to crime and criminal procedure; relating to assault; relating to credit**
2 **toward a sentence of imprisonment for time spent in a treatment program or under**
3 **electronic monitoring; and providing for an effective date."**

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)(60) is amended to read:

7 (60) "sexual contact" means

8 (A) the defendant's

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

11 (ii) knowingly causing the victim to touch, directly or
12 through clothing, the defendant's or victim's genitals, anus, or female
13 breast; or

14 **(iii) knowingly causing the victim to come into**
15 **contact with semen;**

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

17 (i) that may reasonably be construed to be normal
18 caretaker responsibilities for a child, interactions with a child, or
19 affection for a child;

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

23 (iii) that are a necessary part of a search of a person
24 committed to the custody of the Department of Corrections or the
25 Department of Health and Social Services;

26 * **Sec. 3.** AS 12.55.027(d) is repealed and reenacted to read:

27 (d) A court may not grant credit against a sentence of imprisonment for time
28 spent in a private residence or under electronic monitoring.

29 * **Sec. 4.** AS 12.55.027(e) is amended to read:

30 (e) If a defendant intends to claim credit toward a sentence of imprisonment
31 for time spent in a treatment program [OR UNDER ELECTRONIC MONITORING]

1 either as a condition of probation or as a condition of bail release after a petition to
 2 revoke probation has been filed, the defendant shall file notice with the court and the
 3 prosecutor 10 days before the disposition hearing. The notice shall include the amount
 4 of time the defendant is claiming. The defendant must prove by a preponderance of the
 5 evidence that the credit claimed meets the requirements of this section. A court may
 6 not consider, except for good cause, a request for credit made under this subsection
 7 more than 90 days after the disposition hearing.

8 * **Sec. 5.** AS 12.55.125(c) is amended to read:

9 (c) Except as provided in (i) of this section, a defendant convicted of a class A
 10 felony may be sentenced to a definite term of imprisonment of not more than 20 years,
 11 and shall be sentenced to a definite term within the following presumptive ranges,
 12 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

13 (1) if the offense is a first felony conviction and does not involve
 14 circumstances described in (2) **or (5)** of this subsection, three to six years;

15 (2) if the offense is a first felony conviction and the defendant

16 (A) possessed a firearm, used a dangerous instrument, or
 17 caused serious physical injury or death during the commission of the offense,
 18 five to nine years; or

19 (B) knowingly directed the conduct constituting the offense at a
 20 uniformed or otherwise clearly identified peace officer, firefighter, correctional
 21 employee, emergency medical technician, paramedic, ambulance attendant, or
 22 other emergency responder who was engaged in the performance of official
 23 duties at the time of the offense, seven to 11 years;

24 (3) if the offense is a second felony conviction **and does not involve**
 25 **circumstances described in (5) of this subsection**, eight to 12 years;

26 (4) if the offense is a third felony conviction, **does not involve**
 27 **circumstances described in (5) of this subsection**, and the defendant is not subject to
 28 sentencing under (l) of this section, 13 to 20 years;

29 **(5) if the defendant violated AS 11.41.200 and the defendant used a**
 30 **dangerous instrument as defined in AS 11.81.900(b)(15)(B) and**

31 **(A) the offense is a first felony conviction, five to seven**

1 years;

2 (B) the offense is a second felony conviction, nine to 13

3 years;

4 (C) the offense is a third felony conviction, 14 to 20 years.

5 * Sec. 6. AS 12.55.125(d) is amended to read:

6 (d) Except as provided in (i) of this section, a defendant convicted of a class B
7 felony may be sentenced to a definite term of imprisonment of not more than 10 years,
8 and shall be sentenced to a definite term within the following presumptive ranges,
9 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

10 (1) if the offense is a first felony conviction and does not involve
11 circumstances described in (2) or (5) of this subsection, zero to two years; a defendant
12 sentenced under this paragraph may, if the court finds it appropriate, be granted a
13 suspended imposition of sentence under AS 12.55.085;

14 (2) if the offense is a first felony conviction, the defendant violated
15 AS 11.41.130, and the victim was

16 (A) a child under 16 years of age, two to four years; or

17 (B) was 16 years of age or older, one to three years;

18 (3) if the offense is a second felony conviction and does not involve
19 circumstances described in (5) of this subsection, two to five years;

20 (4) if the offense is a third felony conviction and does not involve
21 circumstances described in (5) of this subsection, four to 10 years;

22 (5) if the defendant violated AS 11.41.210 and the defendant used a
23 dangerous instrument as defined in AS 11.81.900(b)(15)(B) and

24 (A) the offense is a first felony conviction, one to three

25 years;

26 (B) the offense is a second felony conviction, four to six

27 years;

28 (C) the offense is a third felony conviction, seven to 10

29 years.

30 * Sec. 7. AS 12.55.125(e) is amended to read:

31 (e) Except as provided in (i) of this section, a defendant convicted of a class C

1 felony may be sentenced to a definite term of imprisonment of not more than five
 2 years, and shall be sentenced to a definite term within the following presumptive
 3 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

4 (1) if the offense is a first felony conviction and does not involve
 5 circumstances described in (4) or (5) of this subsection, zero to two years; a defendant
 6 sentenced under this paragraph may, if the court finds it appropriate, be granted a
 7 suspended imposition of sentence under AS 12.55.085, and the court may, as a
 8 condition of probation under AS 12.55.086, require the defendant to serve an active
 9 term of imprisonment within the range specified in this paragraph;

10 (2) if the offense is a second felony conviction and does not involve
 11 circumstances described in (5) of this section, one to four years;

12 (3) if the offense is a third felony conviction and does not involve
 13 circumstances described in (5) of this section, two to five years;

14 (4) if the offense is a first felony conviction, and the defendant violated
 15 AS 08.54.720(a)(15), one to two years;

16 (5) if the defendant violated AS 11.41.220 and the defendant used a
 17 dangerous instrument as defined in AS 11.81.900(b)(15)(B) and

18 (A) the offense is a first felony conviction, one to three
 19 years;

20 (B) the offense is a second felony conviction, two to five
 21 years;

22 (C) the offense is a third felony conviction, three to five
 23 years.

24 * **Sec. 8.** AS 12.55.125(i) is amended to read:

25 (i) A defendant convicted of

26 (1) sexual assault in the first degree, sexual abuse of a minor in the
 27 first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be
 28 sentenced to a definite term of imprisonment of not more than 99 years and shall be
 29 sentenced to a definite term within the following presumptive ranges, subject to
 30 adjustment as provided in AS 12.55.155 - 12.55.175:

31 (A) if the offense is a first felony conviction, the offense does

1 not involve circumstances described in (B) of this paragraph, and the victim
2 was

3 (i) less than 13 years of age, 25 to 35 years;

4 (ii) 13 years of age or older, 20 to 30 years;

5 (B) if the offense is a first felony conviction and the defendant
6 possessed a firearm, used a dangerous instrument, or caused serious physical
7 injury during the commission of the offense, 25 to 35 years;

8 (C) if the offense is a second felony conviction and does not
9 involve circumstances described in (D) of this paragraph, 30 to 40 years;

10 (D) if the offense is a second felony conviction and the
11 defendant has a prior conviction for a sexual felony, 35 to 45 years;

12 (E) if the offense is a third felony conviction and the defendant
13 is not subject to sentencing under (F) of this paragraph or (I) of this section, 40
14 to 60 years;

15 (F) if the offense is a third felony conviction, the defendant is
16 not subject to sentencing under (I) of this section, and the defendant has two
17 prior convictions for sexual felonies, 99 years;

18 (2) unlawful exploitation of a minor under AS 11.41.455(c)(2), online
19 enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to
20 commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or
21 sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a
22 definite term of imprisonment of not more than 99 years and shall be sentenced to a
23 definite term within the following presumptive ranges, subject to adjustment as
24 provided in AS 12.55.155 - 12.55.175:

25 (A) if the offense is a first felony conviction, the offense does
26 not involve circumstances described in (B) of this paragraph, and the victim
27 was

28 (i) under 13 years of age, 20 to 30 years;

29 (ii) 13 years of age or older, 15 to 30 years;

30 (B) if the offense is a first felony conviction and the defendant
31 possessed a firearm, used a dangerous instrument, or caused serious physical

1 injury during the commission of the offense, 25 to 35 years;

2 (C) if the offense is a second felony conviction and does not
3 involve circumstances described in (D) of this paragraph, 25 to 35 years;

4 (D) if the offense is a second felony conviction and the
5 defendant has a prior conviction for a sexual felony, 30 to 40 years;

6 (E) if the offense is a third felony conviction, the offense does
7 not involve circumstances described in (F) of this paragraph, and the defendant
8 is not subject to sentencing under (I) of this section, 35 to 50 years;

9 (F) if the offense is a third felony conviction, the defendant is
10 not subject to sentencing under (I) of this section, and the defendant has two
11 prior convictions for sexual felonies, 99 years;

12 (3) sexual assault in the second degree, sexual abuse of a minor in the
13 second degree, online enticement of a minor under AS 11.41.452(d), unlawful
14 exploitation of a minor under AS 11.41.455(c)(1), or distribution of child pornography
15 under AS 11.61.125(e)(2) may be sentenced to a definite term of imprisonment of not
16 more than 99 years and shall be sentenced to a definite term within the following
17 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

18 (A) if the offense is a first felony conviction **and does not**
19 **involve circumstances described in (F) of this paragraph**, five to 15 years;

20 (B) if the offense is a second felony conviction and does not
21 involve circumstances described in (C) of this paragraph, 10 to 25 years;

22 (C) if the offense is a second felony conviction and the
23 defendant has a prior conviction for a sexual felony, 15 to 30 years;

24 (D) if the offense is a third felony conviction and does not
25 involve circumstances described in (E) of this paragraph, 20 to 35 years;

26 (E) if the offense is a third felony conviction and the defendant
27 has two prior convictions for sexual felonies, 99 years;

28 **(F) if the offense is a first felony conviction and the**
29 **defendant possessed a firearm, used a dangerous instrument, or caused**
30 **serious physical injury during the commission of the offense, 10 to 25**
31 **years;**

1 (4) sexual assault in the third degree, incest, indecent exposure in the
 2 first degree, possession of child pornography, distribution of child pornography under
 3 AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in
 4 the second degree, sexual abuse of a minor in the second degree, unlawful exploitation
 5 of a minor, or distribution of child pornography, may be sentenced to a definite term
 6 of imprisonment of not more than 99 years and shall be sentenced to a definite term
 7 within the following presumptive ranges, subject to adjustment as provided in
 8 AS 12.55.155 - 12.55.175:

9 (A) if the offense is a first felony conviction **and does not**
 10 **involve circumstances described in (F) of this paragraph**, two to 12 years;

11 (B) if the offense is a second felony conviction and does not
 12 involve circumstances described in (C) of this paragraph, eight to 15 years;

13 (C) if the offense is a second felony conviction and the
 14 defendant has a prior conviction for a sexual felony, 12 to 20 years;

15 (D) if the offense is a third felony conviction and does not
 16 involve circumstances described in (E) of this paragraph, 15 to 25 years;

17 (E) if the offense is a third felony conviction and the defendant
 18 has two prior convictions for sexual felonies, 99 years;

19 **(F) if the offense is a first felony conviction and the**
 20 **defendant possessed a firearm, used a dangerous instrument, or caused**
 21 **serious physical injury during the commission of the offense, seven to 12**
 22 **years.**

23 * **Sec. 9.** AS 12.61.015 is amended by adding a new subsection to read:

24 (d) The prosecuting attorney shall make a reasonable effort to confer with the
 25 victim of a sexual felony as defined under AS 12.55.185, ask the victim or the victim's
 26 legal guardian whether the victim is in agreement with a proposed plea agreement, and
 27 record whether the victim is in agreement with the proposed plea agreement before
 28 entering into the plea agreement. Nothing in this subsection requires the victim to
 29 provide a response regarding the plea agreement or requires the prosecuting attorney
 30 to be bound by the victim's response regarding the plea agreement.

31 * **Sec. 10.** AS 12.55.027(g) is repealed.

1 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. AS 11.41.200(a), as amended by sec. 1 of this Act,
4 AS 11.81.900(b)(60), as amended by sec. 2 of this Act, AS 12.55.027(d), as repealed and
5 reenacted by sec. 3 of this Act, AS 12.55.027(e), as amended by sec. 4 of this Act,
6 AS 12.55.125(c), as amended by sec. 5 of this Act, AS 12.55.125(d), as amended by sec. 6 of
7 this Act, AS 12.55.125(e), as amended by sec. 7 of this Act, AS 12.55.125(i), as amended by
8 sec. 8 of this Act, AS 12.61.015(d), enacted by sec. 9 of this Act, and the repeal of
9 AS 12.55.027(g) by sec. 10 of this Act apply to offenses committed on or after the effective
10 date of this Act.

11 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).