

HOUSE BILL NO. 312

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES CLAMAN, Kopp

Introduced: 1/26/18

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to arrest without a warrant for assault in the fourth degree at a health**
2 **care facility; and relating to an aggravating factor at sentencing for a felony offense**
3 **against a medical professional at a health care facility."**

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

5 *** Section 1.** AS 12.25.030(b) is amended to read:

6 (b) In addition to the authority granted by (a) of this section, a peace officer

7 (1) shall make an arrest under the circumstances described in
8 AS 18.65.530;

9 (2) without a warrant may arrest a person if the officer has probable
10 cause to believe the person has, either in or outside the presence of the officer,

11 (A) committed a crime involving domestic violence, whether
12 the crime is a felony or a misdemeanor; in this subparagraph, "crime involving
13 domestic violence" has the meaning given in AS 18.66.990;

14 (B) committed the crime of violating a protective order in

1 violation of AS 11.56.740; or

2 (C) violated a condition of release imposed under
3 AS 12.30.016(e) or 12.30.027;

4 (3) without a warrant may arrest a person when the peace officer has
5 probable cause for believing that the person has

6 (A) committed a crime under or violated conditions imposed as
7 part of the person's release before trial on misdemeanor charges brought under
8 AS 11.41.270;

9 (B) violated AS 04.16.050 or an ordinance with similar
10 elements; however, unless there is a lawful reason for further detention, a
11 person who is under 18 years of age and who has been arrested for violating
12 AS 04.16.050 or an ordinance with similar elements shall be cited for the
13 offense and released to the person's parent, guardian, or legal custodian; [OR]

14 (C) violated conditions imposed as part of the person's release
15 under the provisions of AS 12.30; or

16 (D) violated AS 11.41.230 at a health care facility, and the
17 person

18 (i) was not seeking medical treatment at the facility;

19 or

20 (ii) was stable for discharge.

21 * **Sec. 2.** AS 12.25.030 is amended by adding a new subsection to read:

22 (e) In this section, "health care facility" has the meaning given in
23 AS 18.07.111.

24 * **Sec. 3.** AS 12.55.155(c) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (13) the defendant knowingly directed the conduct constituting the

1 offense at an active officer of the court or at an active or former judicial officer,
 2 prosecuting attorney, law enforcement officer, correctional employee, firefighter,
 3 emergency medical technician, paramedic, ambulance attendant, or other emergency
 4 responder during or because of the exercise of official duties;

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

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

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

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

15 (18) the offense was a felony

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

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

22 (C) specified in AS 11.41 that is a crime involving domestic
 23 violence and was committed in the physical presence or hearing of a child
 24 under 16 years of age who was, at the time of the offense, living within the
 25 residence of the victim, the residence of the perpetrator, or the residence where
 26 the crime involving domestic violence occurred;

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

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

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

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

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

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

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

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

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

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

22 (25) the defendant is convicted of an offense specified in AS 11.71 and
23 the offense involved large quantities of a controlled substance;

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

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

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

31 (B) is aided or abetted in planning or committing the offense by

1 a person who, at the time the offense was committed, was under 18 years of
2 age and at least three years younger than the defendant;

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

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

7 (30) the defendant is convicted of an offense specified in AS 11.41.410
8 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
9 the victim in furtherance of the offense with the intent to make the victim
10 incapacitated; in this paragraph, "incapacitated" has the meaning given in
11 AS 11.41.470;

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

20 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the
21 offense occurred on school grounds, on a school bus, at a school-sponsored event, or
22 in the administrative offices of a school district if students are educated at that office;
23 in this paragraph,

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

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

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

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

1 AS 18.15.310;

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

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

7 **(36) the defendant committed the offense at a health care facility**
8 **and knowingly directed the conduct constituting the offense at a medical**
9 **professional during or because of the medical professional's exercise of**
10 **professional duties; in this paragraph**

11 **(A) "health care facility" has the meaning given in**
12 **AS 18.07.111;**

13 **(B) "medical professional" has the meaning given in**
14 **AS 12.55.135(k).**

15 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. (a) Section 1 of this Act applies to offenses committed before, on,
18 or after the effective date of sec. 1 of this Act for contacts with peace officers occurring on or
19 after the effective date of sec. 1 of this Act.

20 (b) Section 3 of this Act applies to offenses committed on or after the effective date of
21 sec. 3 of this Act.