

RECOMMENDATION TO THE LEGISLATURE OF ALASKA  
FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

**Recommendation 19-2017, adopted October 12, 2017:  
Enact Vehicular Homicide and Related Statutes**

The Alaska Criminal Justice Commission recommends adding or amending the following statutes in order to create the offenses of aggravated vehicular homicide, vehicular homicide, and negligent vehicular homicide.

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

LEGISLATIVE FINDINGS AND INTENT OF THIS ACT. It is the intent of the legislature to create a specific offense related to homicide committed when operating a motor vehicle. Nothing in this Act should be interpreted by a court to overturn the decisions in *State v. Dunlop*, 721 P.2d 604 (Alaska 1986) and *Jeffries v. State*, 169 P.3d 913 (Alaska 2007). It is the intent of the legislature that the holdings in these cases apply to cases brought under the aggravated vehicular homicide and vehicular homicide statutes enacted in Sec. 2 of this Act.

\* **Sec. 2.** AS 11.41 is amended by adding a new sections to read:

**Sec. 11.41.131. Aggravated vehicular homicide.**

(a) A person commits the crime of aggravated vehicular homicide if the person causes the death of another person while operating a motor vehicle under circumstances manifesting an extreme indifference to the value of human life.

(b) Aggravated vehicular homicide is an unclassified felony and is punishable as provided in AS 12.55.

**Sec. 11.41.132. Vehicular homicide.**

(a) A person commits the crime of vehicular homicide if the person recklessly causes the death of another person while operating a motor vehicle under circumstances not amounting to aggravated vehicular homicide.

(b) Vehicular homicide is a class A felony.

**Sec. 11.41.133. Negligent Vehicular Homicide.**

(a) A person commits the crime of negligent vehicular homicide if, with criminal negligence, the person causes the death of another person while operating a motor vehicle.

(b) Criminally negligent homicide is a class B felony.

\* **Sec. 3.** AS 11.41.140 is amended to read:

In AS 11.41.100-11.41.140,

**(a)** "person", when referring to the victim of a crime, means a human being who has been born and was alive at the time of the criminal act. A person is "alive" if there is spontaneous respiratory or cardiac function or, when respiratory and cardiac functions are maintained by artificial means, there is spontaneous brain function;

**(b)** **"motor vehicle" has the meaning in AS 28.90.990(a)(17).**

\* **Sec. 4.** AS 11.41.135 is amended to read:

If more than one person dies as a result of a person committing conduct constituting a crime specified in **AS 11.41.100-11.41.133** [AS 11.41.100 - 11.41.130], each death constitutes a separately punishable offense.

\* **Sec. 5.** AS 11.81.250 is amended to read:

(a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first **degree**, [AND] **murder in** the second degree, **aggravated vehicular homicide**, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first **degree**, [AND] **murder in** the second degree, **aggravated vehicular homicide**, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

\* **Sec. 6.** AS 12.37.010 is amended to read:

The attorney general, or a person designated in writing or by law to act for the attorney general, may authorize, in writing, an ex parte application to a court of competent jurisdiction for an order authorizing the interception of a private communication if the interception may provide evidence of, or may assist in the apprehension of persons who have committed, are committing, or are planning to commit, the following offenses:

(1) murder in the first or second degree under AS 11.41.100 - 11.41.110;

(2) kidnapping under AS 11.41.300;

(3) a class A or unclassified felony drug offense under AS 11.71;

(4) sex trafficking in the first or second degree under AS 11.66.110 and 11.66.120;

or

(5) human trafficking in the first degree under AS 11.41.360;

**(6) aggravated vehicular homicide under AS 11.41.131.**

\* **Sec. 7.** AS 12.50.201(b) is amended to read:

(b) A peace officer who temporarily detains a person under (a) of this section may

(1) detain the person only as long as reasonably necessary to accomplish the purposes of that subsection;

(2) take one or more photographs of the person, if photographs can be taken without unreasonably delaying the person or removing the person from the vicinity; and

(3) if the person does not provide valid government-issued photographic identification or other valid identification that the officer finds to be reliable to identify the person, or the officer has reasonable suspicion that the identification is not valid,

(A) serve a subpoena on the person to appear before the grand jury where the crime was committed; and

(B) take the person's fingerprint impressions if

(i) the crime under investigation is murder, attempted murder, **aggravated vehicular homicide**, or misconduct involving weapons under AS 11.61.190 or 11.61.195(a)(3); and

(ii) fingerprint impressions can be taken without unreasonably delaying the person or removing the person from the vicinity.

\* **Sec. 8.** AS 12.55.035(b) is amended to read:

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of not more than

(1) \$500,000 for murder in the first or second degree, **aggravated vehicular homicide**, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, sex trafficking in the first degree under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

(3) \$100,000 for a class B felony;

- (4) \$50,000 for a class C felony;
- (5) \$25,000 for a class A misdemeanor;
- (6) \$2,000 for a class B misdemeanor;
- (7) \$500 for a violation.

\* **Sec. 9.** AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 30 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, firefighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

**(D) aggravated vehicular homicide under AS 11.41.131;**

(3) the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

\* **Sec. 10.** AS 12.55.125(b) is amended to read:

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree, **aggravated vehicular homicide**, or murder of an unborn child under AS 11.41.150(a)(2) - (4) shall be sentenced to a definite term of imprisonment of at least 15 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adoptive parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

\* Sec. 11. AS 12.55.127(c) is amended to read:

(c) If the defendant is being sentenced for

(1) escape, the term of imprisonment shall be consecutive to the term for the underlying crime;

(2) two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) **except as provided in subsection (G) below**, the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

(i) manslaughter; or

(ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or 11.41.500 - 11.41.520.

**(G) one-fourth of the mandatory minimum term specified under AS 12.55.125(b) or one fourth the presumptive term specified under AS 12.55.125(c) for each additional crime that is aggravated vehicular homicide under AS 11.41.131, vehicular homicide under AS 11.41.132 or negligent vehicular homicide under AS 11.41.133.**

\* **Sec. 12.** AS 18.67.101 is amended to read:

The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses:

- (A) murder in any degree;
- (B) manslaughter;
- (C) criminally negligent homicide;
- (D) assault in any degree;
- (E) kidnapping;
- (F) sexual assault in any degree;
- (G) sexual abuse of a minor;
- (H) robbery in any degree;

(I) threats to do bodily harm;

(J) driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is under the influence of an alcoholic beverage, inhalant, or controlled substance;

(K) arson in the first degree;

(L) sex trafficking in violation of AS 11.66.110 or 11.66.130(a)(2);

(M) human trafficking in any degree; or

(N) unlawful exploitation of a minor;

**(O) aggravated vehicular homicide, vehicular homicide, or negligent vehicular homicide under AS 11.41.131-11.41.133.**

\* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses committed on or after the effective date.

\* **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).