

**SENATE CS FOR CS FOR HOUSE BILL NO. 38(FIN) am S**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Amended: 2/26/96**

**Offered: 2/14/96**

**Sponsor(s): REPRESENTATIVES BUNDE, Toohey, Rokeberg**

**SENATORS Kelly, Pearce, Green, Torgerson, Leman, Miller, Taylor, Halford, Donley**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to criminal sentencing; relating to good time credit; relating to  
2 the availability for good time credit for offenders convicted of certain first degree  
3 murders; relating to definite sentences, parole, good time credit, pardon,  
4 commutation of sentence, modification or reduction of sentence, reprieve, furlough,  
5 and service of sentence at a correctional restitution center for offenders with at  
6 least three serious felony convictions; and amending Alaska Rule of Criminal  
7 Procedure 35."

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

9 \* **Section 1. FINDINGS AND INTENT.** (a) The legislature finds that  
10 (1) community protection from persistent offenders is a priority for any  
11 civilized society;  
12 (2) a large percentage of criminal offenders convicted in this state have prior  
13 criminal histories;

1 (3) punishments for criminal offenses should be proportionate to both the  
2 seriousness of the crime and the prior criminal history of the offender;

3 (4) the legislature has a right and the responsibility to determine when to  
4 impose extensive periods of confinement.

5 (5) crimes against the person are generally more serious than crimes against  
6 property, crimes against the public health, and other crimes, since crimes against the person  
7 threaten the victim's safety and dignity and often result in physical injury, emotional trauma  
8 or both;

9 (6) the most serious crimes against the person are those classified as  
10 unclassified and class A felonies;

11 (7) although most of the crimes against the person are set out in AS 11.41, two  
12 class A felony offenses against the person are found elsewhere. Arson in the first degree, AS  
13 11.46.400(a), is a crime against the person since it is primarily aimed at protecting the safety  
14 of persons rather than property. Promoting prostitution in the first degree is a crime against  
15 the person since it is primarily designed to deal with the coercive aspects that may be involved  
16 in prostitution. These coercive aspects threaten the safety of persons. AS 11.66.110(a)(2),  
17 which requires proof that a person other than a patron induced or caused a person under 16  
18 years of age to engage in prostitution, is particularly serious due to the youth of the victim.

19 (b) By sentencing three-time, most serious offenders to prison for extensive periods  
20 without the possibility of parole, the legislature intends to

21 (1) improve public safety by placing the most dangerous criminals in prison;

22 (2) reduce the number of serious, repeat offenders by tougher sentencing;

23 (3) set proper and simplified sentencing practices that both victims and  
24 persistent offenders can understand; and

25 (4) restore public trust in our criminal justice system.

26 \* **Sec. 2.** AS 12.55.025(e) is amended to read:

27 (e) Except as provided in (g) and (h) of this section, if the defendant has been  
28 convicted of two or more crimes, sentences of imprisonment shall run consecutively.

29 If the defendant is imprisoned upon a previous judgment of conviction for a crime, the  
30 judgment shall provide that the imprisonment commences at the expiration of the term  
31 imposed by the previous judgment. Nothing in AS 12.55.125(a) **or (l)** limits the court's

1 ability to impose consecutive sentences.

2 \* **Sec. 3.** AS 12.55.125(c) is amended to read:

3 (c) A defendant convicted of a class A felony may be sentenced to a definite  
4 term of imprisonment of not more than 20 years, and shall be sentenced to the  
5 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
6 12.55.175:

7 (1) if the offense is a first felony conviction and does not involve  
8 circumstances described in (2) of this subsection, five years;

9 (2) if the offense is a first felony conviction, other than for  
10 manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or  
11 caused serious physical injury during the commission of the offense, or knowingly  
12 directed the conduct constituting the offense at a uniformed or otherwise clearly  
13 identified peace officer, fire fighter, correctional officer, emergency medical technician,  
14 paramedic, ambulance attendant, or other emergency responder who was engaged in  
15 the performance of official duties at the time of the offense, seven years;

16 (3) if the offense is a second felony conviction, 10 years ;

17 (4) if the offense is a third felony conviction **and the defendant is not**  
18 **subject to sentencing under (l) of this section,** 15 years.

19 \* **Sec. 4.** AS 12.55.125(f) is amended to read:

20 (f) If a defendant is sentenced under (a) or (b) of this section,

21 (1) imprisonment for the prescribed minimum **or mandatory** term may  
22 not be suspended under AS 12.55.080;

23 (2) imposition of sentence may not be suspended under AS 12.55.085;

24 (3) imprisonment for the prescribed minimum **or mandatory** term may  
25 not be [OTHERWISE] reduced, **except as provided in (j) of this section.**

26 \* **Sec. 5.** AS 12.55.125(i) is amended to read:

27 (i) A defendant convicted of sexual assault in the first degree or sexual abuse  
28 of a minor in the first degree may be sentenced to a definite term of imprisonment of  
29 not more than 30 years, and shall be sentenced to the following presumptive terms,  
30 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

1 circumstances described in (2) of this subsection, eight years;

2 (2) if the offense is a first felony conviction, and the defendant  
3 possessed a firearm, used a dangerous instrument, or caused serious physical injury  
4 during the commission of the offense, 10 years;

5 (3) if the offense is a second felony conviction, 15 years;

6 (4) if the offense is a third felony conviction **and the defendant is not**  
7 **subject to sentencing under (1) of this section**, 25 years.

8 \* Sec. 6. AS 12.55.125(j) is amended to read:

9 (j) A defendant sentenced to a **(1)** mandatory term of imprisonment of 99 years  
10 under (a) of this section may apply **once** for a modification or reduction of sentence  
11 under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory  
12 term without consideration of good time earned under AS 33.20.010, **or (2) definite**  
13 **term of imprisonment under (1) of this section may apply once for a modification**  
14 **or reduction of sentence under the Alaska Rules of Criminal Procedure after**  
15 **serving the greater of (A) one-half of the definite term or (B) 30 years. A**  
16 **defendant may not file and a court may not entertain more than one motion for**  
17 **modification or reduction of a sentence subject to this subsection, regardless of**  
18 **whether or not the court granted or denied a previous motion.**

19 \* Sec. 7. AS 12.55.125 is amended by adding a new subsection to read:

20 (l) Notwithstanding any other provision of law, a defendant convicted of an  
21 unclassified or class A felony offense, and not subject to a mandatory 99-year sentence  
22 under (a) of this section, shall be sentenced to a definite term of imprisonment of at  
23 least 40 years but not more than 99 years when the defendant has been previously  
24 convicted of two or more most serious felonies and the prosecuting attorney has filed  
25 a notice of intent to seek a definite sentence under this subsection at the time the  
26 defendant was arraigned in superior court. If a defendant is sentenced to a definite  
27 term under this section,

28 (1) imprisonment for the prescribed definite term may not be suspended  
29 under AS 12.55.080;

30 (2) imposition of sentence may not be suspended under AS 12.55.085;

31 (3) imprisonment for the prescribed definite term may not be reduced,

1 except as provided in (j) of this section.

2 \* **Sec. 8.** AS 12.55.145(a) is amended to read:

3 (a) For purposes of considering prior convictions in imposing sentence under

4 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

5 (A) [(1)] a prior conviction may not be considered if a period  
6 of 10 or more years has elapsed between the date of the defendant's  
7 unconditional discharge on the immediately preceding offense and commission  
8 of the present offense unless the prior conviction was for an unclassified or  
9 class A felony;

10 (B) [(2)] a conviction in this or another jurisdiction of an  
11 offense having elements similar to those of a felony defined as such under  
12 Alaska law at the time the offense was committed is considered a prior felony  
13 conviction;

14 (C) [(3)] two or more convictions arising out of a single,  
15 continuous criminal episode during which there was no substantial change in  
16 the nature of the criminal objective are considered a single conviction unless  
17 the defendant was sentenced to consecutive sentences for the crimes; offenses  
18 committed while attempting to escape or avoid detection or apprehension after  
19 the commission of another offense are not part of the same criminal episode  
20 or objective;

21 (2) AS 12.55.125(l),

22 (A) a conviction in this or another jurisdiction of an offense  
23 having elements similar to those of a most serious felony is considered a  
24 prior most serious felony conviction;

25 (B) commission of and conviction for offenses relied on as  
26 prior most serious felony offenses must occur in the following order:  
27 conviction for the first offense must occur before commission of the second  
28 offense, and conviction for the second offense must occur before  
29 commission of the offense for which the defendant is being sentenced.

30 \* **Sec. 9.** AS 12.55.145(c) is amended to read:

31 (c) The defendant shall file with the court and serve on the prosecuting

attorney notice of denial, consisting of a concise statement of the grounds relied upon and that may be supported by affidavit or other documentary evidence, no later than 10 days before the date set for the imposition of sentence if [IF] the defendant

(1) denies

(A) the authenticity of a prior judgment of conviction;

(B) [,] that the defendant is the person named in the judgment;

(C) [,] that the elements of a prior offense committed in this or another jurisdiction are similar [SUBSTANTIALLY IDENTICAL] to those of a

(i) felony defined as such under Alaska law;

(ii) most serious felony, defined as such under Alaska law;

(D) [, OR] that a prior conviction occurred within the period specified in (a)(1)(A) [(a)(1)] of this section; or

(E) that a previous conviction occurred in the order required under (a)(2)(B) of this section; or

(2) [IF THE DEFENDANT] alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(1)(C) [(a)(3)] of this section [, THE DEFENDANT SHALL FILE WITH THE COURT AND SERVE ON THE PROSECUTING ATTORNEY NOTICE OF DENIAL NO LATER THAN 10 DAYS BEFORE THE DATE SET FOR IMPOSITION OF SENTENCE. THE NOTICE OF DENIAL MUST INCLUDE A CONCISE STATEMENT OF THE GROUNDS RELIED UPON AND MAY BE SUPPORTED BY AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE].

\* **Sec. 10.** AS 12.55.145(d) is amended to read:

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1)(A) [(a)(1)] of this section, [OR] that a conviction should not be considered a prior felony

conviction under (a)(1)(B) [(a)(2)] of this section **or a prior most serious felony conviction under (a)(2)(A) of this section, or that a previous conviction did not occur in the order required under (a)(2)(B) of this section**, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(1)(C) [(a)(3)] of this section is on the defendant by clear and convincing evidence.

\* **Sec. 11.** AS 12.55.145 is amended by adding a new subsection to read:

(f) Under this section, a prior conviction has occurred when a defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or when a verdict of guilty or guilty but mentally ill has been returned by a jury or by the court.

\* **Sec. 12.** AS 12.55.155(c)(20) is amended to read:

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under **AS 12.55.145(a)(1)(B)** [AS 12.55.145(a)(2)];

\* **Sec. 13.** AS 12.55.185 is amended by adding a new paragraph to read:

(14) "most serious felony" means

(A) arson in the first degree, promoting prostitution in the first degree under AS 11.66.110(a)(2), or any unclassified or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41.;

\* **Sec. 14.** AS 33.16.090(b) is amended to read:

(b) Except as provided in (e) of this section, a prisoner is not eligible for discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a) or during the term of a consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g). A prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) **or a definite term under AS 12.55.125(l)** is not eligible for discretionary parole during the entire term.

\* **Sec. 15.** AS 33.20.010(a) is amended to read:

(a) **Notwithstanding** [EXCEPT AS PROVIDED IN (b) OF THIS SECTION

1 AND NOTWITHSTANDING] AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner  
2 convicted of an offense against the state or a political subdivision of the state and  
3 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction  
4 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner  
5 follows the rules of the correctional facility in which the prisoner is confined. A  
6 prisoner is not eligible for a good time deduction if the prisoner has been  
7 sentenced to a

8 (1) mandatory 99-year term of imprisonment under AS 12.55.125(a)  
9 after the effective date of this Act; or

10 (2) definite term under AS 12.55.125(l).

11 \* **Sec. 16.** AS 33.30.101 is amended by adding a new subsection to read:

12 (c) The regulations adopted under (a) of this section may not provide for the  
13 granting of a furlough of any type to a prisoner sentenced to a mandatory 99-year term  
14 of imprisonment under AS 12.55.125(a) or a definite term of imprisonment under  
15 AS 12.55.125(l) unless the prisoner is at all times in the direct custody of a  
16 correctional officer while the prisoner is away from the correctional facility.

17 \* **Sec. 17.** AS 33.30.161(b) is amended to read:

18 (b) To be eligible to serve time in a correctional restitution center, the prisoner

19 (1) must be employable or eligible to work on community service  
20 projects approved by the commissioner and agree to secure employment or participate  
21 in community service projects and obey the rules of the center;

22 (2) may not be serving a sentence for conviction of an offense

23 (A) involving violence or the use of force;

24 (B) under AS 11.41.320, 11.41.330, or AS 11.56.740;

25 (3) may not have been convicted of a felony offense, in the state or  
26 another jurisdiction, involving violence or the use of force; [AND]

27 (4) may not have been convicted of an offense under AS 11.41.410 -  
28 11.41.470 or an offense in the state or another jurisdiction having elements  
29 substantially identical to an offense under AS 11.41.410 - 11.41.470; and

30 (5) may not have been sentenced to a

31 (A) mandatory 99-year term of imprisonment under



1                   AS 12.55.125(a); or  
2                   (B) definite term of imprisonment under AS 12.55.125(l).

3       \* **Sec. 18.** AS 33.20.010(b) is repealed.

4       \* **Sec. 19.** APPLICABILITY. References to prior or previous convictions in this Act apply  
5 to all convictions occurring before, on, or after the effective date of this Act.

6       \* **Sec. 20.** AS 12.55.125(j), amended by sec. 6 of this Act, has the effect of amending  
7 Alaska Rule of Criminal Procedure 35 by

8                   (1) limiting the number of motions for modification or reduction of sentence  
9 that may be filed under the authority of that section; and

10                  (2) permitting a court to reduce or modify a definite sentence of imprisonment  
11 imposed under AS 12.55.125(l) only after the defendant has served the greater of one-half of  
12 the definite term or 30 years.