

27-LS1132X

Gardner

2/13/12

CS FOR SENATE BILL NO. 151()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS MEYER, Hoffman, Dyson, Menard, Paskvan, Egan, Davis, Ellis, McGuire

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to inclusion of fetal alcohol spectrum disorders, traumatic and
2 acquired brain injury, and intellectual disability in the definition of 'mental disease or
3 defect'; and relating to mitigation at sentencing in a criminal case for a defendant
4 suffering from a mental disease or defect."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. AS 12.47.130(5) is amended to read:

7 (5) "mental disease or defect" means a disorder of thought or mood or
8 a condition of impaired brain function that substantially impairs judgment,
9 behavior, capacity to recognize reality, or ability to cope with the ordinary demands of
10 life; "mental disease or defect" also includes "intellectual disability" [MENTAL
11 RETARDATION], which means a significantly below average general intellectual
12 functioning that impairs a person's ability to adapt to or cope with the ordinary
13 demands of life; in this paragraph, "condition of impaired brain function" means
14 fetal alcohol spectrum disorders or traumatic and acquired brain injury;

1 * **Sec. 2.** AS 12.55.155(d) is amended to read:

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

5 (1) the offense was principally accomplished by another person, and
6 the defendant manifested extreme caution or sincere concern for the safety or well-
7 being of the victim;

8 (2) the defendant, although an accomplice, played only a minor role in
9 the commission of the offense;

10 (3) the defendant committed the offense under some degree of duress,
11 coercion, threat, or compulsion insufficient to constitute a complete defense, but that
12 significantly affected the defendant's conduct;

13 (4) the conduct of a youthful defendant was substantially influenced by
14 another person more mature than the defendant;

15 (5) the conduct of an aged defendant was substantially a product of
16 physical or mental infirmities resulting from the defendant's age;

17 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the
18 defendant acted with serious provocation from the victim;

19 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,
20 the victim provoked the crime to a significant degree;

21 (8) before the defendant knew that the criminal conduct had been
22 discovered, the defendant fully compensated or made a good faith effort to fully
23 compensate the victim of the defendant's criminal conduct for any damage or injury
24 sustained;

25 (9) the conduct constituting the offense was among the least serious
26 conduct included in the definition of the offense;

27 (10) the defendant was motivated to commit the offense solely by an
28 overwhelming compulsion to provide for emergency necessities for the defendant's
29 immediate family;

30 (11) after commission of the offense for which the defendant is being
31 sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other

persons who committed an offense;

(12) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(13) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(16) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior;

(17) except in the case of an offense defined by AS 11.41 or AS 11.46.400, the defendant has been convicted of a class B or C felony, and, at the time of sentencing, has successfully completed a court-ordered treatment program as defined in AS 28.35.028 that was begun after the offense was committed;

(18) [EXCEPT IN THE CASE OF AN OFFENSE DEFINED UNDER AS 11.41 OR AS 11.46.400 OR A DEFENDANT WHO HAS PREVIOUSLY BEEN CONVICTED OF A FELONY,] the defendant committed the offense while suffering from a mental disease or defect as defined in AS 12.47.130 that was insufficient to constitute a complete defense but that significantly affected the defendant's conduct;

(19) the defendant is convicted of an offense under AS 11.71, and the defendant sought medical assistance for another person who was experiencing a drug overdose contemporaneously with the commission of the offense.