



# LAWS OF ALASKA

1969

Source

Chapter No.

HB 281 am

117

## AN ACT

Relating to the appellate review of criminal sentences; and providing for an effective date.

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

\* Section 1. AS 22.05.010 is amended to read:

Sec. 22.05.010. JURISDICTION. (a) The supreme court has final appellate jurisdiction in all actions and proceedings. The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. Each justice may issue a writ of habeas corpus, upon petition by or on behalf of any person held in actual custody and may make the writ returnable before the justice himself or before the supreme court, or before any judge of the superior court of the state. An appeal to the supreme court is a matter of right, except that the state shall have no right of appeal in criminal cases, except to test the sufficiency of the indictment or information and under (b) of this section.

(b) The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and by the constitution of this state. For the purpose of considering appeals of sentences on these grounds, the supreme court may sit in divisions.

\* Sec. 2. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and

criminal matters, including but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right, but no appeal from a subordinate court may be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive, as further provided by this section. No appeal may be taken by the state, except to test the sufficiency of an indictment or information. An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 180 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to modify the sentence appealed from upward or downward. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

\* Sec. 3. AS 22.15.240(b) is amended to read:

(b) The defendant may appeal a judgment of conviction given in the district magistrate court in a criminal action to the superior court. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 180 days or more was excessive; however, the supreme court by rule may further provide for review of a judgment given on a plea of guilty. The state has no right of appeal in criminal actions for which judgment is given in the district magistrate courts, except to test the sufficiency of the information.

\* Sec. 4. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.120. APPEAL OF SENTENCE. (a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the supreme court by the state on the ground that the sentence is too lenient; provided, however, that when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(c) A sentence appeal under this section does not

confer or enlarge the right to bail pending appeal. When the defendant, in the prosecution of a regular appeal, urges excessiveness of the sentence as an additional ground for appeal, the defendant's right to bail pending appeal is governed by the relevant statutes and the rules of the court.

\* Sec. 5. The provisions of this Act are applicable only to sentences imposed after the effective date of this Act.

\* Sec. 6. Sections 1 and 4 of this Act change Supreme Court Rule No. 6 by broadening the right of the state to appeal in criminal cases to include an appeal taken on the ground that a sentence is too lenient.

\* Sec. 7. This Act takes effect January 1, 1970.