

HOUSE BILL NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES BUNDE, Toohey

Introduced: 1/16/95

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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

8 * **Section 1.** FINDINGS AND INTENT. (a) The legislature finds that

9 (1) community protection from persistent offenders is a priority for any
10 civilized society;

11 (2) a large percentage of criminal offenders convicted in this state have prior
12 criminal histories;

13 (3) punishments for criminal offenses should be proportionate to both the

1 seriousness of the crime and the prior criminal history of the offender;

2 (4) the legislature has a right and the responsibility to determine when to
3 impose a life sentence.

4 (b) By sentencing three-time, most serious offenders to prison for life without the
5 possibility of parole, the legislature intends to

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

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

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

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

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

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

14 If the defendant is imprisoned upon a previous judgment of conviction for a crime, the
15 judgment shall provide that the imprisonment commences at the expiration of the term
16 imposed by the previous judgment. Nothing in AS 12.55.125(a) or (l) limits the court's
17 ability to impose consecutive sentences.

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

19 (c) A defendant convicted of a class A felony may be sentenced to a definite
20 term of imprisonment of not more than 20 years, and shall be sentenced to the
21 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
22 12.55.175:

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

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

- 1 (3) if the offense is a second felony conviction, 10 years ;
2 (4) if the offense is a third felony conviction **and the defendant is not**
3 **subject to sentencing under (l) of this section**, 15 years.

4 * **Sec. 4.** AS 12.55.125(i) is amended to read:

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

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

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

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

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

17 * **Sec. 5.** AS 12.55.125(j) is amended to read:

18 (j) A defendant sentenced to a mandatory term of imprisonment of 99 years
19 under (a) **or (l)** of this section may apply for a modification or reduction of sentence
20 under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory
21 term without consideration of good time earned under AS 33.20.010.

22 * **Sec. 6.** AS 12.55.125 is amended by adding a new subsection to read:

23 (l) Notwithstanding any other provision of law, a defendant convicted of an
24 unclassified or class A felony offense shall be sentenced to a mandatory term of
25 imprisonment of 99 years when the defendant has been previously convicted of two
26 or more most serious felonies and the prosecuting attorney has filed a notice of intent
27 to seek a 99-year mandatory sentence. If a defendant is sentenced to a mandatory 99-
28 year sentence under this section,

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

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

1 (3) imprisonment for the prescribed mandatory term may not otherwise
2 be reduced.

3 * **Sec. 7.** AS 12.55.145(a) is amended to read:

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

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

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

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

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

22 (2) AS 12.55.125(l),

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

26 (B) of the two or more previous most serious felony
27 convictions, at least one of the previous convictions must have occurred
28 before the commission of any of the other most serious felony offenses and
29 at least one of the other most serious felony convictions must have
30 occurred prior to the commission of the present felony offense.

31 * **Sec. 8.** AS 12.55.145(c) is amended to read:

1 (c) The defendant shall file with the court and serve on the prosecuting
2 attorney notice of denial, consisting of a concise statement of the grounds relied
3 upon and that may be supported by affidavit or other documentary evidence, no
4 later than 10 days before the date set for the imposition of sentence if [IF] the
5 defendant

6 (1) denies

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

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

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

12 (i) felony defined as such under Alaska law;

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

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

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

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

27 * **Sec. 9.** AS 12.55.145(d) is amended to read:

28 (d) Matters alleged in a notice of denial shall be heard by the court sitting
29 without a jury. If the defendant introduces substantial evidence that the defendant is
30 not the person named in a prior judgment of conviction, that the judgment is not
31 authentic, that the conviction did not occur within the period specified in (a)(1)(A)

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

8 * **Sec. 10.** AS 12.55.145 is amended by adding a new subsection to read:

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

12 * **Sec. 11.** AS 12.55.155(c)(20) is amended to read:

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

16 * **Sec. 12.** AS 12.55.185 is amended by adding a new paragraph to read:

17 (14) "most serious felony" means any unclassified or class A felony
18 prescribed under AS 11 or an attempt or conspiracy to commit, or criminal solicitation
19 under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11.

20 * **Sec. 13.** AS 33.16.090(b) is amended to read:

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

28 * **Sec. 14.** AS 33.20.010(a) is amended to read:

29 (a) Except as provided in (b) of this section and notwithstanding
30 AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the
31 state or a political subdivision of the state and sentenced to a term of imprisonment

1 that exceeds three days is entitled to a deduction of one-third of the term of
2 imprisonment rounded off to the nearest day if the prisoner follows the rules of the
3 correctional facility in which the prisoner is confined. **A prisoner is not eligible for**
4 **a good time deduction if the prisoner has been sentenced to a mandatory 99-year**
5 **term of imprisonment under**

6 **(1) AS 12.55.125(a) after the effective date of this Act; or**

7 **(2) AS 12.55.125(l).**

8 * **Sec. 15.** AS 33.30.101 is amended by adding a new subsection to read:

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

14 * **Sec. 16.** AS 33.30.161(b) is amended to read:

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

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

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

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

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

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

24 (4) may not have been convicted of an offense under AS 11.41.410 -
25 11.41.470 or an offense in the state or another jurisdiction having elements
26 substantially identical to an offense under AS 11.41.410 - 11.41.470; **and**

27 **(5) may not have been sentenced to a mandatory 99-year term of**
28 **imprisonment under AS 12.55.125(l).**

29 * **Sec. 17.** APPLICABILITY. References to prior or previous convictions in this Act apply
30 to all convictions occurring before, on, or after the effective date of this Act.

31 * **Sec. 18.** AS 12.55.125(j), amended by sec. 5 of this Act, has the effect of amending

- 1 Alaska Rule of Criminal Procedure 35 by permitting a court to reduce or modify a mandatory
- 2 sentence of imprisonment of 99 years imposed under AS 12.55.125(1) after the defendant has
- 3 served one-half of the mandatory term.