

CS FOR HOUSE BILL NO. 38(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/22/95
Referred: Finance

Sponsor(s): REPRESENTATIVES BUNDE, Toohey

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 definite
3 sentences, parole, good time credit, pardon, commutation of sentence, modification
4 or reduction of sentence, reprieve, furlough, and service of sentence at a
5 correctional restitution center for offenders with at least three serious felony
6 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 extensive periods of confinement.

4 (b) By sentencing three-time, most serious offenders to prison for extensive periods
5 without the 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(f) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

25 (j) A defendant sentenced to a

26 **(1)** mandatory term of imprisonment of 99 years under (a) of this
27 section may apply for a modification or reduction of sentence under the Alaska Rules
28 of Criminal Procedure after serving one-half of the mandatory term without
29 consideration of good time earned under AS 33.20.010;

30 **(2) definite term of imprisonment under (l) of this section may**
31 **apply for a modification or reduction of sentence under the Alaska Rules of**

1 **Criminal Procedure after serving the greater of**

2 **(A) one-half of the definite term; or**

3 **(B) 30 years.**

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

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

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

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

16 (3) imprisonment for the prescribed definite term may not be reduced,
17 except as provided in (j) of this section.

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

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

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

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

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

30 **(C)** [(3)] two or more convictions arising out of a single,
31 continuous criminal episode during which there was no substantial change in

1 the nature of the criminal objective are considered a single conviction unless
2 the defendant was sentenced to consecutive sentences for the crimes; offenses
3 committed while attempting to escape or avoid detection or apprehension after
4 the commission of another offense are not part of the same criminal episode
5 or objective;

6 (2) AS 12.55.125(I),

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

10 (B) commission of and conviction for offenses relied on as
11 prior most serious felony offenses must occur in the following order:
12 conviction for the first offense must occur before commission of the second
13 offense, and conviction for the second offense must occur before
14 commission of the offense for which the defendant is being sentenced.

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

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

21 (1) denies

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

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

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

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

28 (ii) **most serious felony, defined as such under Alaska**

29 law;

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

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

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

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

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

13 (a) Except as provided in (b) of this section and notwithstanding
14 AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the
15 state or a political subdivision of the state and sentenced to a term of imprisonment
16 that exceeds three days is entitled to a deduction of one-third of the term of
17 imprisonment rounded off to the nearest day if the prisoner follows the rules of the
18 correctional facility in which the prisoner is confined. **A prisoner is not eligible for**
19 **a good time deduction if the prisoner has been sentenced to a**

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

22 **(2) definite term under AS 12.55.125(l).**

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

24 (c) The regulations adopted under (a) of this section may not provide for the
25 granting of a furlough of any type to a prisoner sentenced to a definite term of
26 imprisonment under AS 12.55.125(l) unless the prisoner is at all times in the direct
27 custody of a correctional officer while the prisoner is away from the correctional
28 facility.

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

30 (b) To be eligible to serve time in a correctional restitution center, the prisoner
31 (1) must be employable or eligible to work on community service

1 projects approved by the commissioner and agree to secure employment or participate
2 in community service projects and obey the rules of the center;

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

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

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

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

8 (4) may not have been convicted of an offense under AS 11.41.410 -
9 11.41.470 or an offense in the state or another jurisdiction having elements
10 substantially identical to an offense under AS 11.41.410 - 11.41.470; **and**

11 **(5) may not have been sentenced to a definite term of imprisonment**
12 **under AS 12.55.125(l).**

13 * **Sec. 18.** APPLICABILITY. References to prior or previous convictions in this Act apply
14 to all convictions occurring before, on, or after the effective date of this Act.

15 * **Sec. 19.** AS 12.55.125(j), amended by sec. 6 of this Act, has the effect of amending
16 Alaska Rule of Criminal Procedure 35 by permitting a court to reduce or modify a definite
17 sentence of imprisonment imposed under AS 12.55.125(l) only after the defendant has served
18 the greater of one-half of the definite term or 30 years.