

CS FOR HOUSE BILL NO. 38(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/26/95

Offered: 3/22/95

Sponsor(s): REPRESENTATIVES BUNDE, Toohey, Rokeberg

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

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

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

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

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

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

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

15 If the defendant is imprisoned upon a previous judgment of conviction for a crime, the
16 judgment shall provide that the imprisonment commences at the expiration of the term
17 imposed by the previous judgment. Nothing in AS 12.55.125(a) **or (1)** limits the court's
18 ability to impose consecutive sentences.

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

20 (c) A defendant convicted of a class A felony may be sentenced to a definite
21 term of imprisonment of not more than 20 years, and shall be sentenced to the
22 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
23 12.55.175:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (j) A defendant sentenced to a

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

31 **(2)** **definite term of imprisonment under (l) of this section may**

1 apply for a modification or reduction of sentence under the Alaska Rules of
2 Criminal Procedure after serving the greater of

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

4 (B) 30 years.

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

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

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

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

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

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

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

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

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

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

31 (C) [(3)] two or more convictions arising out of a single,

1 continuous criminal episode during which there was no substantial change in
2 the nature of the criminal objective are considered a single conviction unless
3 the defendant was sentenced to consecutive sentences for the crimes; offenses
4 committed while attempting to escape or avoid detection or apprehension after
5 the commission of another offense are not part of the same criminal episode
6 or objective;

7 (2) AS 12.55.125(I),

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

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

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

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

22 (1) denies

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

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

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

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

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

31 (D) [, OR] that a prior conviction occurred within the period

1 specified in (a)(1)(A) [(a)(1)] of this section; or

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

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

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

13 (d) Matters alleged in a notice of denial shall be heard by the court sitting
14 without a jury. If the defendant introduces substantial evidence that the defendant is
15 not the person named in a prior judgment of conviction, that the judgment is not
16 authentic, that the conviction did not occur within the period specified in (a)(1)(A)
17 [(a)(1)] of this section, [OR] that a conviction should not be considered a prior felony
18 conviction under (a)(1)(B) [(a)(2)] of this section or a prior most serious felony
19 conviction under (a)(2)(A) of this section, or that a previous conviction did not
20 occur in the order required under (a)(2)(B) of this section, then the burden is on
21 the state to prove the contrary beyond a reasonable doubt. The burden of proof that
22 two or more convictions should be considered a single conviction under (a)(1)(C)
23 [(a)(3)] of this section is on the defendant by clear and convincing evidence.

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

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

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

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

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

2 (14) "most serious felony" means

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

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

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

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

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

17 (a) **Notwithstanding** [EXCEPT AS PROVIDED IN (b) OF THIS SECTION
18 AND NOTWITHSTANDING] AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner
19 convicted of an offense against the state or a political subdivision of the state and
20 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction
21 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner
22 follows the rules of the correctional facility in which the prisoner is confined. **A**
23 **prisoner is not eligible for a good time deduction if the prisoner has been**
24 **sentenced to a**

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

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

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

29 (c) The regulations adopted under (a) of this section may not provide for the
30 granting of a furlough of any type to a prisoner sentenced to a definite term of
31 imprisonment under AS 12.55.125(l) unless the prisoner is at all times in the direct

1 custody of a correctional officer while the prisoner is away from the correctional
2 facility.

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

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

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

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

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

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

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

13 (4) may not have been convicted of an offense under AS 11.41.410 -
14 11.41.470 or an offense in the state or another jurisdiction having elements
15 substantially identical to an offense under AS 11.41.410 - 11.41.470; **and**

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

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

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

21 * **Sec. 20.** AS 12.55.125(j), amended by sec. 6 of this Act, has the effect of amending
22 Alaska Rule of Criminal Procedure 35 by permitting a court to reduce or modify a definite
23 sentence of imprisonment imposed under AS 12.55.125(l) only after the defendant has served
24 the greater of one-half of the definite term or 30 years.