

**SENATE BILL NO. 61**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR LEMAN

Introduced: 2/3/95

Referred: JUD, FIN

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to criminal sentencing; relating to mandatory 99-year sentences,  
2 parole and furlough eligibility, service of sentence at correctional restitution centers,  
3 and good time credit for defendants with at least three felony convictions when  
4 the current conviction and at least one of the prior convictions is for a most  
5 serious felony; and amending Alaska Rule of Criminal Procedure 35."

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

7 \* **Section 1.** AS 12.55.025(e) is amended to read:

8 (e) Except as provided in (g) and (h) of this section, if the defendant has been  
9 convicted of two or more crimes, sentences of imprisonment shall run consecutively.  
10 If the defendant is imprisoned upon a previous judgment of conviction for a crime, the  
11 judgment shall provide that the imprisonment commences at the expiration of the term  
12 imposed by the previous judgment. Nothing in AS 12.55.125(a) **or (l)** limits the court's  
13 ability to impose consecutive sentences.

1 \* **Sec. 2.** AS 12.55.125(c) is amended to read:

2 (c) A defendant convicted of a class A felony may be sentenced to a definite  
3 term of imprisonment of not more than 20 years, and shall be sentenced to the  
4 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
5 12.55.175:

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

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

15 (3) if the offense is a second felony conviction, 10 years;

16 (4) if the offense is a third felony conviction **and the defendant is not**  
17 **subject to sentencing under (1) of this section**, 15 years.

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

19 (d) A defendant convicted of a class B felony may be sentenced to a definite  
20 term of imprisonment of not more than 10 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 second felony conviction, four years;

24 (2) if the offense is a third felony conviction **and the defendant is not**  
25 **subject to sentencing under (1) of this section**, six years;

26 (3) if the offense is a first felony conviction, and the defendant  
27 knowingly directed the conduct constituting the offense at a uniformed or otherwise  
28 clearly identified peace officer, fire fighter, correctional officer, emergency medical  
29 technician, paramedic, ambulance attendant, or other emergency responder who was  
30 engaged in the performance of official duties at the time of the offense, two years.

31 \* **Sec. 4.** AS 12.55.125(e) is amended to read:

1 (e) A defendant convicted of a class C felony may be sentenced to a definite  
2 term of imprisonment of not more than five years, and shall be sentenced to the  
3 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
4 12.55.175:

5 (1) if the offense is a second felony conviction, two years;

6 (2) if the offense is a third felony conviction **and the defendant is not**  
7 **subject to sentencing under (l) of this section**, three years;

8 (3) if the offense is a first felony conviction, and the defendant  
9 knowingly directed the conduct constituting the offense at a uniformed or otherwise  
10 clearly identified peace officer, fire fighter, correctional officer, emergency medical  
11 technician, paramedic, ambulance attendant, or other emergency responder who was  
12 engaged in the performance of official duties at the time of the offense, one year;

13 (4) if the offense is a first felony conviction, and the defendant violated  
14 AS 08.54.520(a)(7) - (10), one year.

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

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

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

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

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

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

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

29 (j) A defendant sentenced to a mandatory term of imprisonment of 99 years  
30 under (a) **or (l)** of this section may apply for a modification or reduction of sentence  
31 under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory

1 term without consideration of good time earned under AS 33.20.010.

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

3 (l) Notwithstanding any other provision of law, a defendant convicted of a  
4 most serious felony offense shall be sentenced to a mandatory term of imprisonment  
5 for 99 years without the possibility of parole if the defendant has been previously  
6 convicted of two or more felony offenses, at least one of the prior felony convictions  
7 is for a most serious felony offense, and the prosecuting attorney has filed a notice of  
8 intent to seek a mandatory 99-year sentence. If a defendant is sentenced to a  
9 mandatory 99-year sentence under this section,

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

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

13 (3) imprisonment for the prescribed mandatory term may not otherwise  
14 be reduced.

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

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

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

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

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

27 (C) [(3)] two or more convictions arising out of a single,  
28 continuous criminal episode during which there was no substantial change in  
29 the nature of the criminal objective are considered a single conviction unless  
30 the defendant was sentenced to consecutive sentences for the crimes; offenses  
31 committed while attempting to escape or avoid detection or apprehension after

1 the commission of another offense are not part of the same criminal episode  
2 or objective;

3 (2) AS 12.55.125(I),

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

7 (B) at least one of the previous most serious felony  
8 convictions must have occurred prior to the commission of the present  
9 felony offense.

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

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

16 (1) denies

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

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

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

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

23 (ii) **most serious felony, defined as such under Alaska**  
24 law;

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

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

29 (2) if the defendant alleges that two or more purportedly separate prior  
30 convictions should be considered a single conviction under **(a)(1)(C)** [(a)(3)] of this  
31 section [, THE DEFENDANT SHALL FILE WITH THE COURT AND SERVE ON

1 THE PROSECUTING ATTORNEY NOTICE OF DENIAL NO LATER THAN 10  
2 DAYS BEFORE THE DATE SET FOR IMPOSITION OF SENTENCE. THE  
3 NOTICE OF DENIAL MUST INCLUDE A CONCISE STATEMENT OF THE  
4 GROUNDS RELIED UPON AND MAY BE SUPPORTED BY AFFIDAVIT OR  
5 OTHER DOCUMENTARY EVIDENCE].

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

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

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

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

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

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

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

27 (14) "most serious felony" means any of the following felonies or a  
28 felony attempt to commit any of the following felonies:

29 (A) any unclassified or class A felony prescribed under AS 11  
30 or conspiracy or criminal solicitation of an unclassified or class A felony  
31 prescribed under AS 11;

- 1 (B) assault in the second degree;
- 2 (C) sexual assault in the second degree;
- 3 (D) sexual abuse of a minor in the second degree;
- 4 (E) unlawful exploitation of a minor;
- 5 (F) robbery in the second degree;
- 6 (G) extortion.

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

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

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

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

22 **a good time deduction if the prisoner has been sentenced to a**

23 **(1) mandatory 99-year term of imprisonment under AS 12.55.125(a)**

24 **after the effective date of this Act; or**

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

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

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

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

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

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

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

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

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

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

11 (4) may not have been convicted of an offense under AS 11.41.410 -  
12 11.41.470 or an offense in the state or another jurisdiction having elements  
13 substantially identical to an offense under AS 11.41.410 - 11.41.470; **and**

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

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

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