

SENATE BILL NO. 301

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATOR LEMAN

Introduced: 2/12/98

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sentences for misdemeanors."

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

3 * **Section 1.** AS 12.55.025(i) is amended to read:

4 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.133(e),
5 12.55.145(d), 12.55.155(f), and 12.55.165, the preponderance of the evidence standard
6 of proof applies to sentencing proceedings.

7 * **Sec. 2.** AS 12.55 is amended by adding a new section to read:

8 **Sec. 12.55.133. Sentences for certain habitual violent misdemeanor**
9 **offenders.** (a) If a defendant is convicted of a violent misdemeanor and has been
10 previously convicted of a violent misdemeanor two or more times within the 10 years
11 preceding the date of the present offense, the defendant may not be sentenced as a
12 misdemeanant under AS 12.55.035 and 12.55.135 but shall be sentenced as if
13 convicted of a class C felony and shall be punished as provided in this chapter, except
14 that the procedure for determining prior convictions shall be as provided in this
15 section, and AS 12.55.145 does not apply. If a minimum term of imprisonment is

1 imposed under AS 12.55.135 for the misdemeanor for which the defendant is convicted
2 that makes the defendant subject to sentencing for a class C felony, that minimum term
3 of imprisonment may not be suspended by the court when imposing sentence under
4 this section.

5 (b) For the purpose of considering prior convictions in determining if a
6 defendant is subject to sentencing under this section, two or more convictions arising
7 out of a single, continuous criminal episode during which there was no substantial
8 change in the nature of the criminal objective are considered a single conviction unless
9 the defendant was sentenced to consecutive sentences for the crimes; offenses
10 committed while attempting to escape or avoid detection or apprehension after the
11 commission of another offense are not part of the same criminal episode or objective.

12 (c) Prior convictions not expressly admitted by the defendant must be proved
13 by authenticated copies of court records served on the defendant or the defendant's
14 counsel at least 20 days before the date set for imposition of sentence. The
15 authenticated judgments of courts of record of the United States, the District of
16 Columbia, or of any state, territory, or political subdivision of the United States are
17 prima facie evidence of conviction.

18 (d) The defendant shall file with the court and serve on the prosecuting
19 attorney notice of denial, consisting of a concise statement of the grounds relied on
20 and that may be supported by affidavit or other documentary evidence, no later than
21 10 days before the date set for the imposition of sentence if the 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 to those of a violent misdemeanor defined as
27 such under Alaska law; or

28 (D) that a prior conviction occurred within the period specified
29 in (a) of this section; or

30 (2) alleges that two or more purportedly separate prior convictions
31 should be considered a single conviction under (b) of this section.

1 (e) Matters alleged in a notice of denial shall be heard by the court sitting
 2 without a jury. If the defendant introduces substantial evidence that the judgment is
 3 not authentic, that the defendant is not the person named in a prior judgment of
 4 conviction, that a conviction should not be considered a prior violent misdemeanor
 5 conviction, or that a prior conviction did not occur within the period specified in (a)
 6 of this section, then the burden is on the state to prove the contrary beyond a
 7 reasonable doubt. The burden of proof that two or more convictions should be
 8 considered a single conviction under (b) of this section is on the defendant by clear
 9 and convincing evidence.

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

13 (g) In this section, "violent misdemeanor" means any of the following offenses
 14 or an offense of another jurisdiction having elements similar to any of the following
 15 offenses:

- 16 (1) assault in the fourth degree;
- 17 (2) reckless endangerment;
- 18 (3) stalking in the second degree;
- 19 (4) sexual abuse of a minor in the fourth degree;
- 20 (5) resisting arrest;
- 21 (6) violating a protective order;
- 22 (7) misconduct involving weapons in the fourth degree;
- 23 (8) misconduct involving weapons in the fifth degree.

24 * **Sec. 3.** AS 12.55.135(a) is amended to read:

25 (a) **Except as provided in AS 12.55.133, a** [A] defendant convicted of a class
 26 A misdemeanor may be sentenced to a definite term of imprisonment of not more than
 27 one year.

28 * **Sec. 4.** AS 12.55.135(b) is amended to read:

29 (b) **Except as provided in AS 12.55.133, a** [A] defendant convicted of a class
 30 B misdemeanor may be sentenced to a definite term of imprisonment of not more than
 31 90 days unless otherwise specified in the provision of law defining the offense.

1 * **Sec. 5.** AS 12.55.135(c) is amended to read:

2 (c) **Except as provided in AS 12.55.133, a** [A] defendant convicted of assault
3 in the fourth degree committed in violation of the provisions of an order issued or filed
4 under AS 18.66.100 - 18.66.180 or issued under former AS 25.35.010 or 25.35.020
5 shall be sentenced to a minimum term of imprisonment of 20 days.

6 * **Sec. 6.** AS 12.55.135(d) is amended to read:

7 (d) **Except as provided in AS 12.55.133, a** [A] defendant convicted of assault
8 in the fourth degree who knowingly directed the conduct constituting the offense at a
9 uniformed or otherwise clearly identified peace officer, fire fighter, correctional
10 employee, emergency medical technician, paramedic, ambulance attendant, or other
11 emergency responder who was engaged in the performance of official duties at the
12 time of the assault shall be sentenced to a minimum term of imprisonment of

13 (1) 60 days if the defendant violated AS 11.41.230(a)(1) or (2);

14 (2) 30 days if the defendant violated AS 11.41.230(a)(3).

15 * **Sec. 7.** APPLICABILITY. References to prior convictions in this Act apply to all
16 convictions occurring before, on, or after the effective date of this Act.