

SENATE CS FOR CS FOR HOUSE BILL NO. 309(RES) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Amended: 5/11/04

Offered: 5/8/04

Sponsor(s): REPRESENTATIVES WOLF, Rokeberg, Gara, Samuels, Lynn, Dahlstrom

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to nonindigenous fish and consecutive sentencing; and providing for an**
2 **effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE INTENT. It is the intent of the Alaska State Legislature that
7 sec. 4 of this Act does not apply to the culture of ornamental fish on private property in small
8 artificial ponds that have no direct access to the public waters of the state and do not cause
9 significant harm to the continued perpetuation of native, wild, or hatchery stocks of fish.

10 * **Sec. 2.** AS 12.55.025(c) is amended to read:

11 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is
12 sentenced to imprisonment, the term of confinement commences on the date of
13 imposition of sentence unless the court specifically provides that the defendant must
14 report to serve the sentence on another date. If the court provides another date to

1 begin the term of confinement, the court shall provide the defendant with written
 2 notice of the date, time, and location of the correctional facility to which the defendant
 3 must report. A defendant shall receive credit for time spent in custody pending trial,
 4 sentencing, or appeal, if the detention was in connection with the offense for which
 5 sentence was imposed. A defendant may not receive credit for more than the actual
 6 time spent in custody pending trial, sentencing, or appeal. The time during which a
 7 defendant is voluntarily absent from official detention after the defendant has been
 8 sentenced may not be credited toward service of the sentence.

9 * **Sec. 3.** AS 12.55 is amended by adding a new section to read:

10 **Sec. 12.55.127. Consecutive and concurrent terms of imprisonment.** (a) If
 11 a defendant is required to serve a term of imprisonment under a separate judgment, a
 12 term of imprisonment imposed in a later judgment, amended judgment, or probation
 13 revocation shall be consecutive.

14 (b) Except as provided in (c) of this section, if a defendant is being sentenced
 15 for two or more crimes in a single judgment, terms of imprisonment may be
 16 concurrent or partially concurrent.

17 (c) If the defendant is being sentenced for

18 (1) escape, the term of imprisonment shall be consecutive to the term
 19 for the underlying crime;

20 (2) two or more crimes under AS 11.41, a consecutive term of
 21 imprisonment shall be imposed for at least

22 (A) the mandatory minimum term under AS 12.55.125(a) for
 23 each additional crime that is murder in the first degree;

24 (B) the mandatory minimum term for each additional crime
 25 that is an unclassified felony governed by AS 12.55.125(b);

26 (C) the presumptive term specified in AS 12.55.125(c) or the
 27 active term of imprisonment, whichever is less, for each additional crime that
 28 is

29 (i) manslaughter; or

30 (ii) kidnapping that is a class A felony;

31 (D) two years or the active term of imprisonment, whichever is

1 less, for each additional crime that is criminally negligent homicide;

2 (E) one-fourth of the presumptive term under AS 12.55.125(c)
3 or (i) for each additional crime that is sexual assault in the first degree under
4 AS 11.41.410 or sexual abuse of a minor in the first degree under
5 AS 11.41.434, or an attempt, solicitation or conspiracy to commit those
6 offenses; and

7 (F) some additional term of imprisonment for each additional
8 crime, or each additional attempt or solicitation to commit the offense, under
9 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or
10 11.41.500 - 11.41.520.

11 (d) In this section,

12 (1) "active term of imprisonment" means the total term of
13 imprisonment imposed for a crime, minus suspended imprisonment;

14 (2) "additional crime" means a crime that is not the primary crime;

15 (3) "primary crime" means the crime

16 (A) for which the sentencing court imposes the longest active
17 term of imprisonment; or

18 (B) that is designated by the sentencing court as the primary
19 crime when no single crime has the longest active term of imprisonment.

20 * **Sec. 4.** AS 16.35 is amended by adding a new section to read:

21 **Sec. 16.35.210. Nonindigenous fish.** (a) A person may not knowingly
22 release, or transport, possess, import, or export for the purpose of release, into the
23 water of the state live nonindigenous fish or live fertilized eggs of nonindigenous fish,
24 unless permitted by AS 16.05 - 16.40 or by a regulation adopted under AS 16.05 -
25 16.40. This subsection does not apply to

26 (1) a fisherman who catches and releases a fish into the water from
27 which the fish was taken; or

28 (2) generally accepted conduct in relation to permitted salt water
29 commercial or sport fishing.

30 (b) A person may not knowingly rear live ornamental fish in, or release live
31 ornamental fish into, the water of the state.

1 (c) A person who violates this section is guilty of a class A misdemeanor.

2 (d) In addition to the penalty imposed under (c) of this section, a person who
3 is convicted of violating this section may be ordered by the court to pay restitution to
4 the state to cover the costs of damages to fishery resources of the state and of
5 removing the introduced fish species from the water of the state.

6 (e) In this section,

7 (1) "knowingly" has the meaning given in AS 11.81.900;

8 (2) "nonindigenous fish" means a species of fish that is not native to
9 the body of water in which the fish is released or is intended to be released;

10 (3) "ornamental fish" means an aquatic finfish, commonly referred to
11 as tropical fish, aquarium fish, or goldfish, an aquatic invertebrate, or an amphibian
12 that is imported, cultured, or sold in the state customarily for viewing in an aquarium
13 or for raising in an artificial containment system and that is not customarily used for
14 sport fishing in the state or used for human consumption;

15 (4) "water of the state" means any water of the state forming a river,
16 stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea,
17 or ocean, or any other body of water or waterway within the territorial limits of the
18 state.

19 * **Sec. 5.** AS 33.16.090(b) is amended to read:

20 (b) Except as provided in (e) of this section, a prisoner is not eligible for
21 discretionary parole during the term of a presumptive sentence; however, a prisoner is
22 eligible for discretionary parole during a term of sentence enhancement imposed under
23 AS 12.55.155(a) or during the term of a consecutive or partially consecutive
24 presumptive sentence imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)]. A
25 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite
26 term under AS 12.55.125(l) is not eligible for discretionary parole during the entire
27 term.

28 * **Sec. 6.** AS 33.16.090(c) is amended to read:

29 (c) Except as provided in (e) of this section, a prisoner eligible for
30 discretionary parole during a period of sentence enhancement imposed under
31 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence

1 imposed under **AS 12.55.127** [AS 12.55.025(e) OR (g)] shall serve the unenhanced
2 portion of the sentence or the initial presumptive sentence before being otherwise
3 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this
4 subsection, the sentence for the most serious offense in the case of consecutive or
5 partially consecutive presumptive sentences shall be considered the initial presumptive
6 sentence. The unenhanced sentence or the initial presumptive sentence is considered
7 served for purposes of discretionary parole on the date the unenhanced or initial
8 presumptive sentence is due to expire less good time earned under AS 33.20.010.

9 * **Sec. 7.** AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

10 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 APPLICABILITY. Sections 2, 3, and 5 - 7 of this Act apply to offenses occurring on
13 or after the effective date of those sections.

14 * **Sec. 9.** Sections 2, 3, and 5 - 8 of this Act take effect July 1, 2004.

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