

(LIMITED RUN FOR ALL ADDITIONAL SPONSORSHIPS)

HOUSE CS FOR CS FOR SENATE BILL NO. 85(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/19/03

Referred: Today's Calendar

Sponsor(s): SENATORS FRENCH, Ben Stevens, Dyson, Bunde, Guess, Ellis, Elton, Lincoln, Davis, Cowdery

REPRESENTATIVES Ogg, Samuels, Lynn, Gara, McGuire, Wilson

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the factors that may be considered in making a crime victim
 2 compensation award; relating to sentencing and to the earning of good time deductions
 3 for certain sexual offenses."

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

5 * **Section 1.** AS 12.55.125(c) is amended to read:

6 (c) **Except as provided in (i) of this section, a** [A] defendant convicted of a
 7 class A felony may be sentenced to a definite term of imprisonment of not more than
 8 20 years, and shall be sentenced to the following presumptive terms, subject to
 9 adjustment as provided in AS 12.55.155 - 12.55.175:

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

12 (2) if the offense is a first felony conviction

13 (A) other than for manslaughter and the defendant possessed a
 14 firearm, used a dangerous instrument, or caused serious physical injury during

1 the commission of the offense, or knowingly directed the conduct constituting
 2 the offense at a uniformed or otherwise clearly identified peace officer, fire
 3 fighter, correctional employee, emergency medical technician, paramedic,
 4 ambulance attendant, or other emergency responder who was engaged in the
 5 performance of official duties at the time of the offense, seven years;

6 (B) for manslaughter and the conduct resulting in the
 7 conviction was knowingly directed towards a child under the age of 16, seven
 8 years;

9 (C) for manslaughter and the conduct resulting in the
 10 conviction involved driving while under the influence of an alcoholic
 11 beverage, inhalant, or controlled substance, seven years;

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

13 (4) if the offense is a third felony conviction and the defendant is not
 14 subject to sentencing under (I) of this section, 15 years.

15 * **Sec. 2.** AS 12.55.125(d) is amended to read:

16 (d) **Except as provided in (i) of this section, a** [A] defendant convicted of a
 17 class B felony may be sentenced to a definite term of imprisonment of not more than
 18 10 years, and shall be sentenced to the following presumptive terms, subject to
 19 adjustment as provided in AS 12.55.155 - 12.55.175:

20 (1) if the offense is a second felony conviction, four years;

21 (2) if the offense is a third felony conviction, six years.

22 [(3) REPEALED]

23 * **Sec. 3.** AS 12.55.125(e) is amended to read:

24 (e) **Except as provided in (i) of this section, a** [A] defendant convicted of a
 25 class C felony may be sentenced to a definite term of imprisonment of not more than
 26 five years, and shall be sentenced to the following presumptive terms, subject to
 27 adjustment as provided in AS 12.55.155 - 12.55.175:

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

29 (2) if the offense is a third felony conviction, three years; [.]

30 (3) [REPEALED]

31 (4) if the offense is a first felony conviction, and the defendant

1 violated AS 08.54.720(a)(15), one year.

2 * **Sec. 4.** AS 12.55.125(g) is amended to read:

3 (g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), **(e)(3)**
 4 **[(e)(4)]**, or (i) of this section, except to the extent permitted under AS 12.55.155 -
 5 12.55.175,

6 (1) imprisonment may not be suspended under AS 12.55.080;

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

8 (3) terms of imprisonment may not be otherwise reduced.

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

10 (i) A defendant convicted of

11 **(1)** sexual assault in the first degree or sexual abuse of a minor in the
 12 first degree may be sentenced to a definite term of imprisonment of not more than **40**
 13 **[30] years [,]** and shall be sentenced to the following presumptive terms, subject to
 14 adjustment as provided in AS 12.55.155 - 12.55.175:

15 **(A)** **[(1)]** if the offense is a first felony conviction and does not
 16 involve circumstances described in **(B)** **[(2)]** of this **paragraph**
 17 **[SUBSECTION]**, eight years;

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

21 **(C)** **[(3)]** if the offense is a second felony conviction **and does**
 22 **not involve circumstances described in (D) of this paragraph,** 15 years;

23 **(D) if the offense is a second felony conviction and the**
 24 **defendant has a prior conviction for a sexual felony, 20 years;**

25 **(E)** **[(4)]** if the offense is a third felony conviction and the
 26 defendant is not subject to sentencing under **(F) of this paragraph or (l)** of
 27 this section, 25 years;

28 **(F) if the offense is a third felony conviction, the defendant**
 29 **is not subject to sentencing under (l) of this section, and the defendant has**
 30 **two prior convictions for sexual felonies, 30 years;**

31 **(2) attempt, conspiracy, or solicitation to commit sexual assault in**

1 the first degree or sexual abuse of a minor in the first degree may be sentenced to
 2 a definite term of imprisonment of not more than 30 years and shall be sentenced
 3 to the following presumptive terms, subject to adjustment as provided in
 4 AS 12.55.155 - 12.55.175:

5 (A) if the offense is a first felony conviction and does not
 6 involve circumstances described in (B) of this paragraph, five years;

7 (B) if the offense is a first felony conviction, and the
 8 defendant possessed a firearm, used a dangerous instrument, or caused
 9 serious physical injury during the commission of the offense, 10 years;

10 (C) if the offense is a second felony conviction and does not
 11 involve circumstances described in (D) of this paragraph, 10 years;

12 (D) if the offense is a second felony conviction and the
 13 defendant has a prior conviction for a sexual felony, 15 years;

14 (E) if the offense is a third felony conviction, does not
 15 involve circumstances described in (F) of this paragraph, and the
 16 defendant is not subject to sentencing under (I) of this section, 15 years;

17 (F) if the offense is a third felony conviction, the defendant
 18 is not subject to sentencing under (I) of this section, and the defendant has
 19 two prior convictions for sexual felonies, 20 years;

20 (3) sexual assault in the second degree, sexual abuse of a minor in
 21 the second degree, unlawful exploitation of a minor, or distribution of child
 22 pornography may be sentenced to a definite term of imprisonment of not more
 23 than 20 years and shall be sentenced to the following presumptive terms, subject
 24 to adjustment as provided in AS 12.55.155 - 12.55.175:

25 (A) if the offense is a second felony conviction and does not
 26 involve circumstances described in (B) of this paragraph, five years;

27 (B) if the offense is a second felony conviction and the
 28 defendant has a prior conviction for a sexual felony, 10 years;

29 (C) if the offense is a third felony conviction, does not
 30 involve circumstances described in (D) of this paragraph, 10 years;

31 (D) if the offense is a third felony conviction, and the

1 **defendant has two prior convictions for sexual felonies, 15 years;**

2 **(4) sexual assault in the third degree, incest, indecent exposure in**
 3 **the first degree, possession of child pornography, or attempt, conspiracy, or**
 4 **solicitation to commit sexual assault in the second degree, sexual abuse of a minor**
 5 **in the second degree, unlawful exploitation of a minor, or distribution of child**
 6 **pornography, may be sentenced to a definite term of imprisonment of not more**
 7 **than 10 years and shall be sentenced to the following presumptive terms, subject**
 8 **to adjustment as provided in AS 12.55.155 - 12.55.175:**

9 **(A) if the offense is a second felony conviction and does not**
 10 **involve circumstances described in (B) of this paragraph, two years;**

11 **(B) if the offense is a second felony conviction and the**
 12 **defendant has a prior conviction for a sexual felony, three years;**

13 **(C) if the offense is a third felony conviction and does not**
 14 **involve circumstances described in (D) of this paragraph, three years;**

15 **(D) if the offense is a third felony conviction and the**
 16 **defendant has two prior convictions for sexual felonies, six years.**

17 * **Sec. 6.** AS 12.55.145(a) is amended to read:

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

19 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), **or** (e)(2)[, OR (i).]

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

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

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

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

3 (2) AS 12.55.125(l),

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 prior
6 most serious felony conviction;

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

12 (3) AS 12.55.135(g),

13 (A) a prior conviction may not be considered if a period of five
14 or more years has elapsed between the date of the defendant's unconditional
15 discharge on the immediately preceding offense and commission of the present
16 offense unless the prior conviction was for an unclassified or class A felony;

17 (B) a conviction in this or another jurisdiction of an offense
18 having elements similar to those of a crime against a person or a crime
19 involving domestic violence is considered a prior conviction;

20 (C) two or more convictions arising out of a single, continuous
21 criminal episode during which there was no substantial change in the nature of
22 the criminal objective are considered a single conviction unless the defendant
23 was sentenced to consecutive sentences for the crimes; offenses committed
24 while attempting to escape or avoid detection or apprehension after the
25 commission of another offense are not part of the same criminal episode or
26 objective;

27 **(4) AS 12.55.125(i),**

28 **(A) a conviction in this or another jurisdiction of an offense**
29 **having elements similar to those of a sexual felony is a prior conviction for**
30 **a sexual felony;**

31 **(B) a felony conviction in another jurisdiction making it a**

1 crime to commit any lewd and lascivious act upon a child under the age of
 2 16 years, with the intent of arousing, appealing to, or gratifying the sexual
 3 desires of the defendant or the victim is a prior conviction for a sexual
 4 felony;

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

12 * **Sec. 7.** AS 12.55.155(a) is amended to read:

13 (a) If a defendant is convicted of an offense and is subject to sentencing under
 14 AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), **(e)(3)** [(e)(4)], or (i) and

15 (1) the presumptive term is four years or less, the court may decrease
 16 the presumptive term by an amount as great as the presumptive term for factors in
 17 mitigation or may increase the presumptive term up to the maximum term of
 18 imprisonment for factors in aggravation;

19 (2) the presumptive term of imprisonment is more than four years, the
 20 court may decrease the presumptive term by an amount as great as 50 percent of the
 21 presumptive term for factors in mitigation or may increase the presumptive term up to
 22 the maximum term of imprisonment for factors in aggravation.

23 * **Sec. 8.** AS 12.55.165(a) is amended to read:

24 (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d)(1),
 25 (d)(2), (e)(1), (e)(2), **(e)(3)** [(e)(4)], or (i) and the court finds by clear and convincing
 26 evidence that manifest injustice would result from failure to consider relevant
 27 aggravating or mitigating factors not specifically included in AS 12.55.155 or from
 28 imposition of the presumptive term, whether or not adjusted for aggravating or
 29 mitigating factors, the court shall enter findings and conclusions and cause a record of
 30 the proceedings to be transmitted to a three-judge panel for sentencing under
 31 AS 12.55.175.

1 * **Sec. 9.** AS 12.55.185 is amended by adding a new paragraph to read:

2 (17) "sexual felony" means sexual assault in the first degree, sexual
3 abuse of a minor in the first degree, sexual assault in the second degree, sexual abuse
4 of a minor in the second degree, unlawful exploitation of a minor, distribution of child
5 pornography, sexual assault in the third degree, incest, indecent exposure in the first
6 degree, possession of child pornography, and felony attempt, conspiracy, or
7 solicitation to commit those crimes.

8 * **Sec. 10.** AS 18.67.080(c) is amended to read:

9 (c) In determining whether to make an order under this section, the board shall
10 consider all circumstances determined to be relevant, including provocation, consent,
11 or any other behavior of the victim that directly or indirectly contributed to the
12 victim's injury or death, the prior case or social history, if any, of the victim, the
13 victim's need for financial aid, and any other relevant matters. **In applying this**
14 **subsection,**

15 **(1) the board may not deny an order based on the factors in this**
16 **subsection, unless those factors relate significantly to the occurrence that caused**
17 **the victimization and are of such a nature and quality that a reasonable or**
18 **prudent person would know that the factors or actions could lead to the crime**
19 **and the victimization;**

20 **(2) with regard to circumstances in which the victim consented to,**
21 **provoked, or incited the criminal act, the board may consider those**
22 **circumstances only if the board finds that it is more probable than not that those**
23 **circumstances occurred and were the cause of the crime and the victimization;**

24 **(3) the board may deny an order based on the victim's involvement**
25 **with illegal drugs, only if**

26 **(A) the victim was involved in the manufacture or delivery**
27 **of a controlled substance at the time of the crime or the crime and**
28 **victimization was a direct result of the prior manufacture or delivery of a**
29 **controlled substance; the evidence of this manufacture or delivery must be**
30 **corroborated by law enforcement or other credible sources; and**

31 **(B) the evidence shows a direct correlation linking the**

1 **illegal activity and the crime and victimization; or**

2 **(4) if a claim is based on a crime involving domestic violence or on**
 3 **a crime of sexual abuse of a minor or sexual assault and the offender is**

4 **(A) convicted of one of those crimes, notwithstanding (1) -**
 5 **(3) of this subsection, the board may not deny an order based on**
 6 **considerations of provocation, the use of alcohol or drugs by the victim, or**
 7 **the prior social history of the victim; or**

8 **(B) not convicted of one of those crimes, the board may not**
 9 **deny an order based on the involvement or behavior of the victim.**

10 * **Sec. 11.** AS 33.20.010(a) is amended to read:

11 (a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner
 12 convicted of an offense against the state or a political subdivision of the state and
 13 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction
 14 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner
 15 follows the rules of the correctional facility in which the prisoner is confined. A
 16 prisoner is not eligible for a good time deduction if the prisoner has been sentenced
 17 [TO A]

18 (1) to a mandatory 99-year term of imprisonment under
 19 AS 12.55.125(a) after June 27, 1996; [OR]

20 (2) to a definite term under AS 12.55.125(~~J~~); **or**

21 **(3) for a sexual felony under AS 12.55.125(i) and has one or more**
 22 **prior sexual felony convictions as determined under AS 12.55.145(a)(4).**

23 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
 24 read:

25 **APPLICABILITY.** (a) The changes made to AS 12.55.125 and 12.55.145 by this Act
 26 apply to sentencings for offenses committed on or after the effective date of this Act. All
 27 references to prior or previous convictions in AS 12.55.125 and 12.55.145, as amended by
 28 this Act, apply to convictions occurring before, on, or after the effective date of this Act.

29 (b) The changes made to the earning of good time deductions under AS 33.20.010
 30 apply to offenses occurring on or after the effective date of this Act. References to prior
 31 convictions under AS 33.20.010(a) apply to offenses occurring before, on, or after the

1 effective date of this Act.