

**HOUSE BILL NO. 78**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES SAMUELS, McGuire, Hawker**

**Introduced: 1/18/05**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to criminal law and procedure, criminal sentences, and probation and**  
2 **parole; and providing for an effective date."**

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

4 **\* Section 1.** AS 12.40.100 is amended by adding a new subsection to read:

5 (c) An indictment that complies with this section and with applicable rules  
6 adopted by the supreme court, is valid and need not specify aggravating factors set out  
7 in AS 12.55.155.

8 **\* Sec. 2.** AS 12.55.015(a) is amended to read:

9 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing  
10 sentence on a defendant convicted of an offense, may singly or in combination

11 (1) impose a

12 (A) fine when authorized by law and as provided in  
13 AS 12.55.035; or

14 (B) day fine when authorized by law and as provided in

1 AS 12.55.036 if the court does not impose a term of periodic or continuous  
2 imprisonment or place the defendant on probation;

3 (2) order the defendant to be placed on probation under conditions  
4 specified by the court that may include provision for active supervision;

5 (3) impose a definite term of periodic imprisonment, **but only if an**  
6 **employment obligation of the defendant preexisted sentencing and continuous**  
7 **incarceration would cause extreme hardship to the defendant's ability to pay**  
8 **finest or restitution;**

9 (4) impose a definite term of continuous imprisonment;

10 (5) order the defendant to make restitution under AS 12.55.045;

11 (6) order the defendant to carry out a continuous or periodic program  
12 of community work under AS 12.55.055;

13 (7) suspend execution of all or a portion of the sentence imposed under  
14 AS 12.55.080;

15 (8) suspend imposition of sentence under AS 12.55.085;

16 (9) order the forfeiture to the commissioner of public safety or a  
17 municipal law enforcement agency of a deadly weapon that was in the actual  
18 possession of or used by the defendant during the commission of an offense described  
19 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

20 (10) order the defendant, while incarcerated, to participate in or  
21 comply with the treatment plan of a rehabilitation program that is related to the  
22 defendant's offense or to the defendant's rehabilitation if the program is made available  
23 to the defendant by the Department of Corrections;

24 (11) order the forfeiture to the state of a motor vehicle, weapon,  
25 electronic communication device, or money or other valuables, used in or obtained  
26 through an offense that was committed for the benefit of, at the direction of, or in  
27 association with a criminal street gang;

28 (12) order the defendant to have no contact, either directly or  
29 indirectly, with a victim or witness of the offense until the defendant is  
30 unconditionally discharged.

31 \* **Sec. 3.** AS 12.55.025(i) is amended to read:

1 (i) Except as provided by AS 12.55.125(a)(3), [12.55.125(k),] 12.55.145(d),  
 2 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof  
 3 applies to sentencing proceedings.

4 \* **Sec. 4.** AS 12.55.055(d) is amended to read:

5 (d) The court may offer a defendant convicted of an offense the option of  
 6 performing community work in lieu of a sentence of imprisonment. Substitution of  
 7 community work shall be at a rate of eight hours for each day of imprisonment. A  
 8 court may not offer substitution of community work for any mandatory minimum  
 9 period of imprisonment or for any period **within the** [OF A] presumptive **range**  
 10 [TERM] of imprisonment **for the offense.**

11 \* **Sec. 5.** AS 12.55.088(c) is amended to read:

12 (c) **A** [NO] sentence may **not** be reduced or modified so as to result in a term  
 13 of imprisonment **that** [WHICH] is less than the minimum [OR PRESUMPTIVE]  
 14 sentence **or within the presumptive range** required by law for the original sentence.

15 \* **Sec. 6.** AS 12.55.100(a) is amended to read:

16 (a) While on probation and among the conditions of probation, the defendant  
 17 may be required

18 (1) to pay a fine in one or several sums;

19 (2) to make restitution or reparation to aggrieved parties for actual  
 20 damages or loss caused by the crime for which conviction was had, including  
 21 compensation to a victim that is a nonprofit organization for the value of labor or  
 22 goods provided by volunteers if the labor or goods were necessary to alleviate or  
 23 mitigate the effects of the defendant's crime;

24 (3) to provide for the support of any persons for whose support the  
 25 defendant is legally responsible;

26 (4) to perform community work in accordance with AS 12.55.055;

27 (5) to participate in or comply with the treatment plan of an inpatient  
 28 or outpatient rehabilitation program specified by either the court or the defendant's  
 29 probation officer that is related to the defendant's offense or to the defendant's  
 30 rehabilitation; [AND]

31 (6) to satisfy the screening, evaluation, referral, and program

1 requirements of an agency authorized by the court to make referrals for rehabilitative  
2 treatment or to provide rehabilitative treatment; **and**

3 **(7) if ordered by the court, to abide by additional conditions of**  
4 **probation imposed by the defendant's probation officer; an additional condition**  
5 **imposed by the probation officer must be provided in writing to the defendant;**  
6 **the additional condition is binding upon delivery until modified by the court; this**  
7 **paragraph does not require written notice of conditions relating to the day-to-day**  
8 **management of probationers, in which probation officers direct the activities of**  
9 **probationers to implement existing court-imposed conditions.**

10 \* **Sec. 7.** AS 12.55.120 is amended by adding a new subsection to read:

11 (e) A sentence reviewed by the appellate court under this section and  
12 AS 22.07.020, or by the superior court under AS 22.10.020, or a sentence reviewed by  
13 petition accepted under court rules, may not be reversed as excessive, and the  
14 sentencing court is not required to make specific findings, if the sentence is within an  
15 applicable presumptive range set out in AS 12.55.125, or is a consecutive or partially  
16 consecutive sentence imposed in accordance with the minimum sentences set out in  
17 AS 12.55.127.

18 \* **Sec. 8.** AS 12.55.125(c) is amended to read:

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

23 (1) if the offense is a first felony conviction and does not involve  
24 circumstances described in (2) of this subsection, **five to eight** [FIVE] years;

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

26 [(A) OTHER THAN FOR MANSLAUGHTER] and the  
27 defendant possessed a firearm, used a dangerous instrument, or caused serious  
28 physical injury **or death** during the commission of the offense, or knowingly  
29 directed the conduct constituting the offense at a uniformed or otherwise  
30 clearly identified peace officer, fire fighter, correctional employee, emergency  
31 medical technician, paramedic, ambulance attendant, or other emergency

1 responder who was engaged in the performance of official duties at the time of  
2 the offense, seven to eleven [SEVEN] years;

3 [(B) FOR MANSLAUGHTER AND THE CONDUCT  
4 RESULTING IN THE CONVICTION WAS KNOWINGLY DIRECTED  
5 TOWARDS A CHILD UNDER THE AGE OF 16, SEVEN YEARS;

6 (C) FOR MANSLAUGHTER AND THE CONDUCT  
7 RESULTING IN THE CONVICTION INVOLVED DRIVING WHILE  
8 UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE,  
9 INHALANT, OR CONTROLLED SUBSTANCE, SEVEN YEARS;]

10 (3) if the offense is a second felony conviction, 10 to 14 [10] years;

11 (4) if the offense is a third felony conviction and the defendant is not  
12 subject to sentencing under (l) of this section, 15 to 20 [15] years.

13 \* **Sec. 9.** AS 12.55.125(d) is amended to read:

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

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

20 (2) if the offense is a first felony conviction, the defendant violated  
21 AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

22 (3) if the offense is a second felony conviction, four to seven [FOUR]  
23 years;

24 (4) [(2)] if the offense is a third felony conviction, six to ten [SIX]  
25 years.

26 \* **Sec. 10.** AS 12.55.125(e) is amended to read:

27 (e) Except as provided in (i) of this section, a defendant convicted of a class C  
28 felony may be sentenced to a definite term of imprisonment of not more than five  
29 years, and shall be sentenced to a definite term within the following presumptive  
30 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

1 **circumstances described in (4) of this subsection, zero to two years;**

2 **(2)** if the offense is a second felony conviction, **two to four** [TWO]  
3 years;

4 **(3)** [(2)] if the offense is a third felony conviction, **three to five**  
5 [THREE] years;

6 **(4)** [(3)] if the offense is a first felony conviction, and the defendant  
7 violated AS 08.54.720(a)(15), **one to two years** [ONE YEAR].

8 \* **Sec. 11.** AS 12.55.125(g) is amended to read:

9 (g) If a defendant is sentenced under (c), **(d), (e)** [(d)(1), (d)(2), (e)(1), (e)(2),  
10 (e)(3)], or (i) of this section, except to the extent permitted under AS 12.55.155 -  
11 12.55.175,

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

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

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

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

16 (i) A defendant convicted of

17 (1) sexual assault in the first degree or sexual abuse of a minor in the  
18 first degree may be sentenced to a definite term of imprisonment of not more than 40  
19 years and shall be sentenced to **a definite term within** the following presumptive  
20 **ranges** [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

21 (A) if the offense is a first felony conviction and does not  
22 involve circumstances described in (B) of this paragraph, **eight to twelve**  
23 [EIGHT] years;

24 (B) if the offense is a first felony conviction and the defendant  
25 possessed a firearm, used a dangerous instrument, or caused serious physical  
26 injury during the commission of the offense, **12 to 16** [10] years;

27 (C) if the offense is a second felony conviction and does not  
28 involve circumstances described in (D) of this paragraph, **15 to 20** [15] years;

29 (D) if the offense is a second felony conviction and the  
30 defendant has a prior conviction for a sexual felony, **20 to 30** [20] years;

31 (E) if the offense is a third felony conviction and the defendant

1 is not subject to sentencing under (F) of this paragraph or (I) of this section, **25**  
 2 **to 35** [25] years;

3 (F) if the offense is a third felony conviction, the defendant is  
 4 not subject to sentencing under (I) of this section, and the defendant has two  
 5 prior convictions for sexual felonies, **30 to 40** [30] years;

6 (2) attempt, conspiracy, or solicitation to commit sexual assault in the  
 7 first degree or sexual abuse of a minor in the first degree may be sentenced to a  
 8 definite term of imprisonment of not more than 30 years and shall be sentenced to **a**  
 9 **definite term within** the following presumptive **ranges** [TERMS], subject to  
 10 adjustment as provided in AS 12.55.155 - 12.55.175:

11 (A) if the offense is a first felony conviction and does not  
 12 involve circumstances described in (B) of this paragraph, **five to eight** [FIVE]  
 13 years;

14 (B) if the offense is a first felony conviction, and the defendant  
 15 possessed a firearm, used a dangerous instrument, or caused serious physical  
 16 injury during the commission of the offense, **10 to 14** [10] years;

17 (C) if the offense is a second felony conviction and does not  
 18 involve circumstances described in (D) of this paragraph, **12 to 16** [10] years;

19 (D) if the offense is a second felony conviction and the  
 20 defendant has a prior conviction for a sexual felony, **15 to 20** [15] years;

21 (E) if the offense is a third felony conviction, does not involve  
 22 circumstances described in (F) of this paragraph, and the defendant is not  
 23 subject to sentencing under (I) of this section, **15 to 25** [15] years;

24 (F) if the offense is a third felony conviction, the defendant is  
 25 not subject to sentencing under (I) of this section, and the defendant has two  
 26 prior convictions for sexual felonies, **20 to 30** [20] years;

27 (3) sexual assault in the second degree, sexual abuse of a minor in the  
 28 second degree, unlawful exploitation of a minor, or distribution of child pornography  
 29 may be sentenced to a definite term of imprisonment of not more than 20 years and  
 30 shall be sentenced to **a definite term within** the following presumptive **ranges**  
 31 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

1 (A) **if the offense is a first felony conviction, two to four**  
 2 **years;**

3 (B) if the offense is a second felony conviction and does not  
 4 involve circumstances described in (C) [(B)] of this paragraph, **five to eight**  
 5 [FIVE] years;

6 (C) [(B)] if the offense is a second felony conviction and the  
 7 defendant has a prior conviction for a sexual felony, **10 to 14** [10] years;

8 (D) [(C)] if the offense is a third felony conviction, does not  
 9 involve circumstances described in (E) [(D)] of this paragraph, **10 to 14** [10]  
 10 years;

11 (E) [(D)] if the offense is a third felony conviction, and the  
 12 defendant has two prior convictions for sexual felonies, **15 to 20** [15] years;

13 (4) sexual assault in the third degree, incest, indecent exposure in the  
 14 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to  
 15 commit sexual assault in the second degree, sexual abuse of a minor in the second  
 16 degree, unlawful exploitation of a minor, or distribution of child pornography, may be  
 17 sentenced to a definite term of imprisonment of not more than 10 years and shall be  
 18 sentenced to **a definite term within** the following presumptive **ranges** [TERMS],  
 19 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

20 (A) **if the offense is a first felony conviction, one to two**  
 21 **years;**

22 (B) if the offense is a second felony conviction and does not  
 23 involve circumstances described in (C) [(B)] of this paragraph, **two to five**  
 24 [TWO] years;

25 (C) [(B)] if the offense is a second felony conviction and the  
 26 defendant has a prior conviction for a sexual felony, **three to six** [THREE]  
 27 years;

28 (D) [(C)] if the offense is a third felony conviction and does not  
 29 involve circumstances described in (E) [(D)] of this paragraph, **three to six**  
 30 [THREE] years;

31 (E) [(D)] if the offense is a third felony conviction and the

1 defendant has two prior convictions for sexual felonies, six to ten [SIX] years.

2 \* **Sec. 13.** AS 12.55.125 is amended by adding a new subsection to read:

3 (n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i)  
4 of this section, the total term, made up of the active term of imprisonment plus any  
5 suspended term of imprisonment, must fall within the presumptive range, and the  
6 active term of imprisonment may not fall below the lower end of the presumptive  
7 range.

8 \* **Sec. 14.** AS 12.55.127(d) is amended by adding a new paragraph to read:

9 (4) "presumptive term" means the middle of the applicable  
10 presumptive range set out in AS 12.55.125.

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

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

13 (1) AS 12.55.125(c), (d), or (e) [(d)(1), (d)(2), (e)(1), OR (e)(2)],

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

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

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

28 (2) AS 12.55.125(l),

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

1 (B) commission of and conviction for offenses relied on as  
2 prior most serious felony offenses must occur in the following order:  
3 conviction for the first offense must occur before commission of the second  
4 offense, and conviction for the second offense must occur before commission  
5 of the offense for which the defendant is being sentenced;

6 (3) AS 12.55.135(g),

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

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

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

21 (4) AS 12.55.125(i),

22 (A) a conviction in this or another jurisdiction of an offense  
23 having elements similar to those of a sexual felony is a prior conviction for a  
24 sexual felony;

25 (B) a felony conviction in another jurisdiction making it a  
26 crime to commit any lewd and lascivious act upon a child under the age of 16  
27 years, with the intent of arousing, appealing to, or gratifying the sexual desires  
28 of the defendant or the victim is a prior conviction for a sexual felony;

29 (C) two or more convictions arising out of a single, continuous  
30 criminal episode during which there was no substantial change in the nature of  
31 the criminal objective are considered a single conviction unless the defendant

1 was sentenced to consecutive sentences for the crimes; offenses committed  
 2 while attempting to escape or avoid detection or apprehension after the  
 3 commission of another offense are not part of the same criminal episode or  
 4 objective.

5 \* **Sec. 16.** AS 12.55.155(a) is amended to read:

6 (a) **Except as provided in (e) of this section, if** [IF] a defendant is convicted  
 7 of an offense and is subject to sentencing under **AS 12.55.125(c), (d), (e), or (i)**  
 8 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and

9 (1) the **low end of the** presumptive **range** [TERM] is four years or  
 10 less, the court may **impose any sentence below the presumptive range** [DECREASE  
 11 THE PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS THE  
 12 PRESUMPTIVE TERM] for factors in mitigation or may increase the **active term of**  
 13 **imprisonment** [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
 14 for factors in aggravation;

15 (2) the **low end of the** presumptive **range** [TERM OF  
 16 IMPRISONMENT] is more than four years, the court may **impose a sentence below**  
 17 **the presumptive range as long as the active term of imprisonment is not less than**  
 18 **50 percent of the low end of the presumptive range** [DECREASE THE  
 19 PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS 50 PERCENT OF THE  
 20 PRESUMPTIVE TERM] for factors in mitigation or may increase the **active term of**  
 21 **imprisonment** [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
 22 for factors in aggravation.

23 \* **Sec. 17.** AS 12.55.155(b) is amended to read:

24 (b) **Sentences** [SENTENCE INCREMENTS AND DECREMENTS] under  
 25 this section **that are outside of the presumptive ranges set out in AS 12.55.125**  
 26 shall be based on the totality of the aggravating and mitigating factors set out in (c)  
 27 and (d) of this section.

28 \* **Sec. 18.** AS 12.55.155(c) is amended to read:

29 (c) The following factors shall be considered by the sentencing court **if**  
 30 **proven in accordance with this section, and may allow imposition of a sentence**  
 31 **above the presumptive range** [AND MAY AGGRAVATE THE PRESUMPTIVE

1 TERMS] set out in AS 12.55.125:

2 (1) a person, other than an accomplice, sustained physical injury as a  
3 direct result of the defendant's conduct;

4 (2) the defendant's conduct during the commission of the offense  
5 manifested deliberate cruelty to another person;

6 (3) the defendant was the leader of a group of three or more persons  
7 who participated in the offense;

8 (4) the defendant employed a dangerous instrument in furtherance of  
9 the offense;

10 (5) the defendant knew or reasonably should have known that the  
11 victim of the offense was particularly vulnerable or incapable of resistance due to  
12 advanced age, disability, ill health, or extreme youth or was for any other reason  
13 substantially incapable of exercising normal physical or mental powers of resistance;

14 (6) the defendant's conduct created a risk of imminent physical injury  
15 to three or more persons, other than accomplices;

16 (7) a prior felony conviction considered for the purpose of invoking **a**  
17 [THE] presumptive **range under** [TERMS OF] this chapter was of a more serious  
18 class of offense than the present offense;

19 (8) the defendant's prior criminal history includes conduct involving  
20 aggravated or repeated instances of assaultive behavior;

21 (9) the defendant knew that the offense involved more than one victim;

22 (10) the conduct constituting the offense was among the most serious  
23 conduct included in the definition of the offense;

24 (11) the defendant committed the offense **under** [PURSUANT TO] an  
25 agreement that the defendant either pay or be paid for the commission of the offense,  
26 and the pecuniary incentive was beyond that inherent in the offense itself;

27 (12) the defendant was on release under AS 12.30.020 or 12.30.040 for  
28 another felony charge or conviction or for a misdemeanor charge or conviction having  
29 assault as a necessary element;

30 (13) the defendant knowingly directed the conduct constituting the  
31 offense at an active officer of the court or at an active or former judicial officer,

1 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,  
 2 emergency medical technician, paramedic, ambulance attendant, or other emergency  
 3 responder during or because of the exercise of official duties;

4 (14) the defendant was a member of an organized group of five or  
 5 more persons, and the offense was committed to further the criminal objectives of the  
 6 group;

7 (15) the defendant has three or more prior felony convictions;

8 (16) the defendant's criminal conduct was designed to obtain  
 9 substantial pecuniary gain and the risk of prosecution and punishment for the conduct  
 10 is slight;

11 (17) the offense was one of a continuing series of criminal offenses  
 12 committed in furtherance of illegal business activities from which the defendant  
 13 derives a major portion of the defendant's income;

14 (18) the offense was a felony

15 (A) specified in AS 11.41 and was committed against a spouse,  
 16 a former spouse, or a member of the social unit **made up of** [COMPRISED  
 17 OF] those living together in the same dwelling as the defendant;

18 (B) specified in AS 11.41.410 - 11.41.458 and the defendant  
 19 has engaged in the same or other conduct prohibited by a provision of  
 20 AS 11.41.410 - 11.41.460 involving the same or another victim; or

21 (C) specified in AS 11.41 that is a crime involving domestic  
 22 violence and was committed in the physical presence or hearing of a child  
 23 under 16 years of age who was, at the time of the offense, living within the  
 24 residence of the victim, the residence of the perpetrator, or the residence where  
 25 the crime involving domestic violence occurred;

26 (19) the defendant's prior criminal history includes an adjudication as a  
 27 delinquent for conduct that would have been a felony if committed by an adult;

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

31 (21) the defendant has a criminal history of repeated instances of

1 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,  
 2 similar in nature to the offense for which the defendant is being sentenced under this  
 3 section;

4 (22) the defendant knowingly directed the conduct constituting the  
 5 offense at a victim because of that person's race, sex, color, creed, physical or mental  
 6 disability, ancestry, or national origin;

7 (23) the defendant is convicted of an offense specified in AS 11.71 and

8 (A) the offense involved the delivery of a controlled substance  
 9 under circumstances manifesting an intent to distribute the substance as part of  
 10 a commercial enterprise; or

11 (B) at the time of the conduct resulting in the conviction, the  
 12 defendant was caring for or assisting in the care of a child under 10 years of  
 13 age;

14 (24) the defendant is convicted of an offense specified in AS 11.71 and  
 15 the offense involved the transportation of controlled substances into the state;

16 (25) the defendant is convicted of an offense specified in AS 11.71 and  
 17 the offense involved large quantities of a controlled substance;

18 (26) the defendant is convicted of an offense specified in AS 11.71 and  
 19 the offense involved the distribution of a controlled substance that had been  
 20 adulterated with a toxic substance;

21 (27) the defendant, being 18 years of age or older,

22 (A) is legally accountable under AS 11.16.110(2) for the  
 23 conduct of a person who, at the time the offense was committed, was under 18  
 24 years of age and at least three years younger than the defendant; or

25 (B) is aided or abetted in planning or committing the offense by  
 26 a person who, at the time the offense was committed, was under 18 years of  
 27 age and at least three years younger than the defendant;

28 (28) the victim of the offense is a person who provided testimony or  
 29 evidence related to a prior offense committed by the defendant;

30 (29) the defendant committed the offense for the benefit of, at the  
 31 direction of, or in association with a criminal street gang;

1 (30) the defendant is convicted of an offense specified in AS 11.41.410  
 2 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
 3 the victim in furtherance of the offense with the intent to make the victim  
 4 incapacitated; in this paragraph, "incapacitated" has the meaning given in  
 5 AS 11.41.470;

6 **(31) the defendant's prior criminal history includes convictions for**  
 7 **five or more crimes in this or another jurisdiction that are class A misdemeanors**  
 8 **under the law of this state, or having elements similar to a class A misdemeanor;**  
 9 **two or more convictions arising out of a single continuous episode are considered**  
 10 **a single conviction; however, an offense is not a part of a continuous episode if**  
 11 **committed while attempting to escape or resist arrest or if it is an assault upon a**  
 12 **uniformed or otherwise clearly identified peace officer; notice and denial of**  
 13 **convictions are governed by AS 12.55.145(b), (c), and (d).**

14 \* Sec. 19. AS 12.55.155(d) is amended to read:

15 (d) The following factors shall be considered by the sentencing court **if**  
 16 **proven in accordance with this section, and may allow imposition of a sentence**  
 17 **below the presumptive range** [AND MAY MITIGATE THE PRESUMPTIVE  
 18 TERMS] set out in AS 12.55.125:

19 (1) the offense was principally accomplished by another person, and  
 20 the defendant manifested extreme caution or sincere concern for the safety or well-  
 21 being of the victim;

22 (2) the defendant, although an accomplice, played only a minor role in  
 23 the commission of the offense;

24 (3) the defendant committed the offense under some degree of duress,  
 25 coercion, threat, or compulsion insufficient to constitute a complete defense, but **that**  
 26 [WHICH] significantly affected the defendant's conduct;

27 (4) the conduct of a youthful defendant was substantially influenced by  
 28 another person more mature than the defendant;

29 (5) the conduct of an aged defendant was substantially a product of  
 30 physical or mental infirmities resulting from the defendant's age;

31 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the

1 defendant acted with serious provocation from the victim;

2 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,  
3 the victim provoked the crime to a significant degree;

4 (8) [REPEALED

5 (9)] the conduct constituting the offense was among the least serious  
6 conduct included in the definition of the offense;

7 (9) [(10)] before the defendant knew that the criminal conduct had  
8 been discovered, the defendant fully compensated or made a good faith effort to fully  
9 compensate the victim of the defendant's criminal conduct for any damage or injury  
10 sustained;

11 (10) [(11)] the defendant was motivated to commit the offense solely  
12 by an overwhelming compulsion to provide for emergency necessities for the  
13 defendant's immediate family;

14 (11) [(12)] the defendant assisted authorities to detect, apprehend, or  
15 prosecute other persons who committed an offense;

16 (12) [(13)] the facts surrounding the commission of the offense and  
17 any previous offenses by the defendant establish that the harm caused by the  
18 defendant's conduct is consistently minor and inconsistent with the imposition of a  
19 substantial period of imprisonment;

20 (13) [(14)] the defendant is convicted of an offense specified in  
21 AS 11.71 and the offense involved small quantities of a controlled substance;

22 (14) [(15)] the defendant is convicted of an offense specified in  
23 AS 11.71 and the offense involved the distribution of a controlled substance, other  
24 than a schedule IA controlled substance, to a personal acquaintance who is 19 years of  
25 age or older for no profit;

26 (15) [(16)] the defendant is convicted of an offense specified in  
27 AS 11.71 and the offense involved the possession of a small amount of a controlled  
28 substance for personal use in the defendant's home;

29 (16) [(17)] in a conviction for assault or attempted assault or for  
30 homicide or attempted homicide, the defendant acted in response to domestic violence  
31 perpetrated by the victim against the defendant and the domestic violence consisted of

1 aggravated or repeated instances of assaultive behavior.

2 \* **Sec. 20.** AS 12.55.155(e) is amended to read:

3 (e) If a factor in aggravation is a necessary element of the present offense, or  
 4 requires the imposition of a **sentence within the** presumptive **range** [TERM] under  
 5 AS 12.55.125(c)(2), that factor may not be used to **impose a sentence above the high**  
 6 **end of** [AGGRAVATE] the presumptive **range** [TERM]. If a factor in mitigation is  
 7 raised at trial as a defense reducing the offense charged to a lesser included offense,  
 8 that factor may not be used to **impose a sentence below the low end of** [MITIGATE]  
 9 the presumptive **range** [TERM].

10 \* **Sec. 21.** AS 12.55.155(f) is amended to read:

11 (f) If the state seeks to establish a factor in aggravation at sentencing

12 **(1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this**  
 13 **section,** or if the defendant seeks to establish a factor in mitigation at sentencing,  
 14 written notice must be served on the opposing party and filed with the court not later  
 15 than 10 days before the date set for imposition of sentence; **the factors** [. FACTORS]  
 16 in aggravation **listed in this paragraph,** and factors in mitigation must be established  
 17 by clear and convincing evidence before the court sitting without a jury; **all** [. ALL]  
 18 findings must be set out with specificity;

19 **(2) other than one listed in (1) of this subsection, the factor shall be**  
 20 **presented to a trial jury under procedures set by the court, unless the defendant**  
 21 **waives trial by jury, stipulates to the existence of the factor, or consents to have**  
 22 **the factor proven under procedures set out in (1) of this subsection; a factor in**  
 23 **aggravation presented to a jury is established if proved beyond a reasonable**  
 24 **doubt; written notice of the intent to establish a factor in aggravation must be**  
 25 **served on the defendant and filed with the court**

26 **(A) 10 days before trial, or at another time specified by the**  
 27 **court;**

28 **(B) within 48 hours, or at a time specified by the court, if**  
 29 **the court instructs the jury about the option to return a verdict for a lesser**  
 30 **included offense; or**

31 **(C) five days before entering a plea that results in a finding**

1 **of guilt, or at another time specified by the court.**

2 \* **Sec. 22.** AS 12.55.165(a) is amended to read:

3 (a) If the defendant is subject to sentencing under **AS 12.55.125(c), (d), (e), or**  
 4 **(i)** [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and the court finds by  
 5 clear and convincing evidence that manifest injustice would result from failure to  
 6 consider relevant aggravating or mitigating factors not specifically included in  
 7 AS 12.55.155 or from imposition of **a sentence within** the presumptive **range**  
 8 [TERM], whether or not adjusted for aggravating or mitigating factors, the court shall  
 9 enter findings and conclusions and cause a record of the proceedings to be transmitted  
 10 to a three-judge panel for sentencing under AS 12.55.175.

11 \* **Sec. 23.** AS 12.55.175(b) is amended to read:

12 (b) Upon receipt of a record of proceedings under AS 12.55.165, the three-  
 13 judge panel shall consider all pertinent files, records, and transcripts, including the  
 14 findings and conclusions of the judge who originally heard the matter. The panel may  
 15 hear oral testimony to supplement the record before it. If the panel supplements the  
 16 record, the panel shall permit the victim to testify before the panel. If the panel finds  
 17 that manifest injustice would result from failure to consider relevant aggravating or  
 18 mitigating factors not specifically included in AS 12.55.155 or from imposition of **a**  
 19 **sentence within** the presumptive **range** [TERM], whether or not adjusted for  
 20 aggravating or mitigating factors, it shall sentence the defendant in accordance with  
 21 this section. If the panel does not find that manifest injustice would result, it shall  
 22 remand the case to the sentencing court, with a written statement of its findings and  
 23 conclusions, for sentencing under AS 12.55.125.

24 \* **Sec. 24.** AS 12.55.175(e) is amended to read:

25 (e) If the three-judge panel determines under (b) of this section that manifest  
 26 injustice would result from imposition of **a sentence within** the presumptive **range**  
 27 [TERM] and the panel also finds that the defendant has an exceptional potential for  
 28 rehabilitation and that a sentence of less than the presumptive **range** [TERM] should  
 29 be imposed because of the defendant's exceptional potential for rehabilitation, the  
 30 panel

31 (1) shall sentence the defendant **within** [TO] the presumptive **range**

1 [TERM] required under AS 12.55.125 or as permitted under AS 12.55.155;

2 (2) shall order the defendant under AS 12.55.015 to engage in  
3 appropriate programs of rehabilitation; and

4 (3) may provide that the defendant is eligible for discretionary parole  
5 under AS 33.16.090 during the second half of the sentence imposed under this  
6 subsection if the defendant successfully completes all rehabilitation programs ordered  
7 under (2) of this subsection.

8 \* **Sec. 25.** AS 12.55.185 is amended by adding a new paragraph to read:

9 (18) "active term of imprisonment" has the meaning given in  
10 AS 12.55.127.

11 \* **Sec. 26.** AS 33.05.070 is amended by adding new subsections to read:

12 (c) At any time within the probation period, a police officer certified by the  
13 Alaska Police Standards Council may detain a probationer if the police officer has  
14 reasonable suspicion that the probationer has recently violated or may imminently  
15 violate a probation condition relating to one of the topics set out in (d) of this section.  
16 The police officer may also arrest the probationer without a warrant if the police  
17 officer has probable cause to believe that the probationer has violated a probation  
18 condition relating to one of the topics set out in (d) of this section.

19 (d) The conditions that permit a police officer to detain or arrest a probationer  
20 or parolee without a warrant under AS 33.16.240 and (c) of this section are those  
21 conditions imposed by the court, or the parole board, relating to

22 (1) geographic limitations on the probationer's movements;

23 (2) possessing or consuming controlled substances under state or  
24 federal law;

25 (3) possessing firearms;

26 (4) possessing or consuming alcoholic beverages, or being in a place  
27 where they are sold or served;

28 (5) operating or driving a motor vehicle; or

29 (6) other conduct that creates an imminent public danger or threatens  
30 serious harm to persons or property.

31 \* **Sec. 27.** AS 33.16.085(a) is amended to read:

1 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term  
 2 **or sentence** a prisoner may be serving or any restriction on parole eligibility under  
 3 AS 12.55, a prisoner who is serving a term of at least 181 days, may, upon application  
 4 by the prisoner or the commissioner, be released by the board on special medical  
 5 parole if the board determines that

6 (1) the prisoner has not been convicted of an offense under  
 7 AS 11.41.410 - 11.41.425 or 11.41.434 - 11.41.438 and the prisoner is severely  
 8 medically or cognitively disabled as certified in writing by a physician licensed under  
 9 AS 08.64

10 (2) a reasonable probability exists that

11 (A) the prisoner will live and remain at liberty without  
 12 violating any laws or conditions imposed by the board;

13 (B) because of the prisoner's severe medical or cognitive  
 14 disability, the prisoner will not pose a threat of harm to the public if released  
 15 on parole; and

16 (C) release of the prisoner on parole would not diminish the  
 17 seriousness of the crime;

18 (3) the prisoner

19 (A) was not suffering from the severe medical or cognitive  
 20 disability at the time the prisoner committed the offense or parole or probation  
 21 violation for which the prisoner is presently incarcerated; or

22 (B) was suffering from the severe medical or cognitive  
 23 disability at the time the prisoner committed the offense or parole or probation  
 24 violation for which the prisoner is presently incarcerated and the medical or  
 25 cognitive disability has progressed so that the likelihood of the prisoner's  
 26 committing the same or a similar offense is low;

27 (4) the care and supervision that the prisoner requires can be provided  
 28 in a more medically appropriate or cost-effective manner than by the department;

29 (5) the prisoner is incapacitated to an extent that incarceration does not  
 30 impose significant additional restrictions on the prisoner;

31 (6) the prisoner is likely to remain subject to the severe medical or

1 cognitive disability throughout the entire period of parole or to die and there is no  
 2 reasonable expectation that the prisoner's medical or cognitive disability will improve  
 3 noticeably; and

4 (7) an appropriate discharge plan has been formulated that addresses  
 5 basic life domains of the prisoner, including care coordination, housing, eligibility for  
 6 public benefits, and health care, including necessary medication.

7 \* **Sec. 28.** AS 33.16.090 is repealed and reenacted to read:

8 **Sec. 33.16.090. Eligibility for discretionary parole and minimum terms to**  
 9 **be served.** (a) A prisoner sentenced to an active term of imprisonment of at least 181  
 10 days may, in the discretion of the board, be released on discretionary parole if the  
 11 prisoner has served the amount of time specified under (b) of this section, except that

12 (1) a prisoner sentenced to one or more mandatory 99-year terms under  
 13 AS 12.55.125(a) or one or more definite terms under AS 12.55.125(I) is not eligible  
 14 for consideration for discretionary parole;

15 (2) a prisoner is not eligible for consideration of discretionary parole if  
 16 made ineligible by order of a court under AS 12.55.115;

17 (3) a prisoner imprisoned under AS 12.55.086 is not eligible for  
 18 discretionary parole unless the actual term of imprisonment is more than one year.

19 (b) A prisoner eligible under (a) of this section who is sentenced

20 (1) to a single sentence under AS 12.55.125(a) or (b) may not be  
 21 released on discretionary parole until the prisoner has served the mandatory minimum  
 22 term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment  
 23 imposed, or any term set under AS 12.55.115, whichever is greatest;

24 (2) to a single sentence within or below a presumptive range set out in  
 25 AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i), and has not been allowed by the  
 26 three-judge panel under AS 12.55.175 to be considered for discretionary parole  
 27 release, may not be released on discretionary parole until the prisoner has served the  
 28 term imposed, less good time earned under AS 33.20.010;

29 (3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and  
 30 (4), or (i), and has been allowed by the three-judge panel under AS 12.55.175 to be  
 31 considered for discretionary parole release during the second half of the sentence, may

1 not be released on discretionary parole until

2 (A) the prisoner has served that portion of the active term of  
3 imprisonment required by the three-judge panel; and

4 (B) in addition to the factors set out in AS 33.16.100(a), the  
5 board determines that

6 (i) the defendant has successfully completed all  
7 rehabilitation programs ordered by the three-judge panel that were  
8 made available to the prisoner; and

9 (ii) the prisoner would not constitute a danger to the  
10 public if released on parole;

11 (4) to a single enhanced sentence under AS 12.55.155(a) that is above  
12 the applicable presumptive range, may not be released on discretionary parole until the  
13 prisoner has served the greater of the following:

14 (A) an amount of time, less good time earned under  
15 AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth  
16 of the amount of time above the presumptive range; or

17 (B) any term set under AS 12.55.115;

18 (5) to a single sentence under any other provision of law, may not be  
19 released on discretionary parole until the prisoner has served at least one-fourth of the  
20 active term of imprisonment, any mandatory minimum sentence imposed under any  
21 provision of law, or any term set under AS 12.55.115, whichever is greatest;

22 (6) to concurrent sentences, may not be released on discretionary  
23 parole until the prisoner has served the greatest of

24 (A) any mandatory minimum sentence or sentences imposed  
25 under any provision of law;

26 (B) any term set under AS 12.55.115; or

27 (C) the amount of time that is required to be served under (1) -  
28 (5) of this subsection for the sentence imposed for the primary crime, had that  
29 been the only sentence imposed;

30 (7) to consecutive or partially consecutive sentences, may not be  
31 released on discretionary parole until the prisoner has served the greatest of

1 (A) the composite total of any mandatory minimum sentence or  
2 sentences imposed under any provision of law, including AS 12.55.127;

3 (B) any term set under AS 12.55.115; or

4 (C) the amount of time that is required to be served under (1) -  
5 (5) of this subsection for the sentence imposed for the primary crime, had that  
6 been the only sentence imposed, plus one-quarter of the composite total of the  
7 active term of imprisonment imposed as consecutive or partially consecutive  
8 sentences imposed for all crimes other than the primary crime.

9 (c) As used in this section,

10 (1) "active term of imprisonment" has the meaning given in  
11 AS 12.55.185;

12 (2) "primary crime" has the meaning given in AS 12.55.127.

13 \* **Sec. 29.** AS 33.16.100 is amended by adding a new subsection to read:

14 (e) If the parole board considers an application for discretionary parole, and  
15 denies parole because the prisoner does not meet the standards in (a) of this section,  
16 the board may make a prisoner ineligible for further consideration of discretionary  
17 parole, or may require that additional time be served before the prisoner is again  
18 eligible for consideration for discretionary parole.

19 \* **Sec. 30.** AS 33.16.240(c) is amended to read:

20 (c) **In addition to the powers granted to a police officer under (g) of this**  
21 **section, a** [A] parole officer may, without a warrant, arrest a parolee for a violation of  
22 parole only if there is danger to the public, if there is a likelihood that the parolee will  
23 flee, or if the parolee committed a crime in the presence of the parole officer.

24 \* **Sec. 31.** AS 33.16.240 is amended by adding a new subsection to read:

25 (g) At any time within the period of parole supervision, a police officer  
26 certified by the Alaska Police Standards Council may detain a parolee if the officer  
27 has reasonable suspicion that the person has recently violated or may imminently  
28 violate a parole condition relating to one of the topics set out in AS 33.05.070(d). The  
29 officer may also arrest the parolee without a warrant if the officer has probable cause  
30 to believe that the person has violated a parole condition relating to one of the topics  
31 set out in AS 33.05.070(d).

1     \* **Sec. 32.** AS 12.55.125(k); AS 33.16.100(c) and 33.16.100(d) are repealed.

2     \* **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4           **APPLICABILITY.** Sections 1, 4, 6, 26, and 29 - 31 of this Act apply to offenses  
5 committed before, on, or after the effective date of this Act. Sections 2, 3, 5, 7 - 25, and 27 -  
6 28 of this Act apply to offenses committed on or after the effective date of this Act.  
7 References to prior offenses or convictions in secs. 8 - 21 of this Act include offenses  
8 committed before, on, or after the effective date of this Act.

9     \* **Sec. 34.** This Act takes effect July 1, 2005.