

HOUSE CS FOR CS FOR SENATE BILL NO. 56(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/9/05

Referred: Finance

Sponsor(s): SENATORS THERRIAULT, Seekins, Green

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.** 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 legislature in passing this Act to
7 preserve the basic structure of Alaska's presumptive sentencing system, which is designed to
8 avoid disparate sentences. With this Act, the legislature sets out a sentencing framework,
9 subject to judicial adjustment for statutory aggravating or mitigating factors that are
10 determined in a manner that is constitutional under the decision of the United States Supreme
11 Court in Blakely v. Washington. The single, definite presumptive terms set out in current law
12 can unduly constrain the sentencing process, particularly under the mandates of Blakely v.
13 Washington. Although the presumptive terms are being replaced by presumptive ranges, it is
14 not the intent of this Act in doing so to bring about an overall increase in the amount of active

1 imprisonment for felony sentences. Rather, this Act is intended to give judges the authority to
 2 impose an appropriate sentence, with an appropriate amount of probation supervision, by
 3 taking into account the consideration set out in AS 12.55.005 and 12.55.015.

4 * **Sec. 2.** 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. 3.** 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
 15 AS 12.55.036 if the court does not impose a term of periodic or continuous
 16 imprisonment or place the defendant on probation;

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

19 (3) impose a definite term of periodic imprisonment, **but only if an**
 20 **employment obligation of the defendant preexisted sentencing and the defendant**
 21 **receives a composite sentence of not more than two years to serve;**

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

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

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

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

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

29 (9) order the forfeiture to the commissioner of public safety or a
 30 municipal law enforcement agency of a deadly weapon that was in the actual
 31 possession of or used by the defendant during the commission of an offense described

1 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

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

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

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

13 * **Sec. 4.** AS 12.55.025(i) is amended to read:

14 (i) Except as provided by AS 12.55.125(a)(3), [12.55.125(k),] 12.55.145(d),
15 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof
16 applies to sentencing proceedings.

17 * **Sec. 5.** AS 12.55.055(d) is amended to read:

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

24 * **Sec. 6.** AS 12.55.088(c) is amended to read:

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

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

30 (e) A sentence within an applicable presumptive range set out in AS 12.55.125
31 or a consecutive or partially consecutive sentence imposed in accordance with the

1 minimum sentences set out in AS 12.55.127 may not be appealed to the court of
 2 appeals under this section or AS 22.07.020 on the ground that the sentence is
 3 excessive. However, the sentence may be reviewed by the supreme court on the
 4 ground that it is excessive through a petition filed under rules adopted by the supreme
 5 court.

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

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

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

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

14 [(A) OTHER THAN FOR MANSLAUGHTER] and the
 15 defendant possessed a firearm, used a dangerous instrument, or caused serious
 16 physical injury **or death** during the commission of the offense, or knowingly
 17 directed the conduct constituting the offense at a uniformed or otherwise
 18 clearly identified peace officer, fire fighter, correctional employee, emergency
 19 medical technician, paramedic, ambulance attendant, or other emergency
 20 responder who was engaged in the performance of official duties at the time of
 21 the offense, **seven to 11** [SEVEN] years;

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

25 (C) FOR MANSLAUGHTER AND THE CONDUCT
 26 RESULTING IN THE CONVICTION INVOLVED DRIVING WHILE
 27 UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE,
 28 INHALANT, OR CONTROLLED SUBSTANCE, SEVEN YEARS;]

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

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

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

2 (d) Except as provided in (i) of this section, a defendant convicted of a class B
3 felony may be sentenced to a definite term of imprisonment of not more than 10 years,
4 and shall be sentenced to **a definite term within** the following presumptive **ranges**
5 **[TERMS]**, subject to adjustment as provided in AS 12.55.155 - 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, one to three years; a defendant**
8 **sentenced under this paragraph may, if the court finds it appropriate, be granted**
9 **a suspended imposition of sentence under AS 12.55.085 if, as a condition of**
10 **probation under AS 12.55.086, the defendant is required to serve an active term**
11 **of imprisonment within the range specified in this paragraph, unless the court**
12 **finds that a mitigation factor under AS 12.55.155 applies;**

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

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

17 (4) [(2)] if the offense is a third felony conviction, **six to 10** [SIX]
18 years.

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

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

24 (1) **if the offense is a first felony conviction and does not involve**
25 **circumstances described in (4) of this subsection, zero to two years;**

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

28 (3) [(2)] if the offense is a third felony conviction, **three to five**
29 [THREE] years;

30 (4) [(3)] if the offense is a first felony conviction, and the defendant
31 violated AS 08.54.720(a)(15), **one to two years** [ONE YEAR].

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

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

5 (1) [IMPRISONMENT MAY NOT BE SUSPENDED UNDER
6 AS 12.55.080;

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

8 ~~(2)~~ [(3)] terms of imprisonment may not be otherwise reduced.

9 * **Sec. 12.** 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 years and shall be sentenced to **a definite term within** the following presumptive
14 **ranges** [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

15 (A) if the offense is a first felony conviction and does not
16 involve circumstances described in (B) of this paragraph, **eight to 12** [EIGHT]
17 years;

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

21 (C) if the offense is a second felony conviction and does not
22 involve circumstances described in (D) of this paragraph, **15 to 20** [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 to 30** [20] years;

25 (E) if the offense is a third felony conviction and the defendant
26 is not subject to sentencing under (F) of this paragraph or (I) of this section, **25**
27 **to 35** [25] years;

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

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

1 first degree or sexual abuse of a minor in the first degree may be sentenced to a
 2 definite term of imprisonment of not more than 30 years and shall be sentenced to **a**
 3 **definite term within** the following presumptive **ranges** [TERMS], subject to
 4 adjustment as provided in 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 to eight** [FIVE]
 7 years;

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

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

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

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

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

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

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

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

31 (C) [(B)] if the offense is a second felony conviction and the

1 defendant has a prior conviction for a sexual felony, **10 to 14** [10] years;

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

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

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

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

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

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

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

25 **(E)** [(D)] if the offense is a third felony conviction and the
26 defendant has two prior convictions for sexual felonies, **six to 10** [SIX] years.

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

28 (n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i)
29 of this section, the total term, made up of the active term of imprisonment plus any
30 suspended term of imprisonment, must fall within the presumptive range, and the
31 active term of imprisonment may not fall below the lower end of the presumptive

1 range.

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

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

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

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

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

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

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

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

22 (2) AS 12.55.125(l),

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

26 (B) commission of and conviction for offenses relied on as
27 prior most serious felony offenses must occur in the following order:
28 conviction for the first offense must occur before commission of the second
29 offense, and conviction for the second offense must occur before commission
30 of the offense for which the defendant is being sentenced;

31 (3) AS 12.55.135(g),

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

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

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

15 (4) AS 12.55.125(i),

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

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

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

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

31 (a) **Except as provided in (e) of this section, if** [IF] a defendant is convicted

1 of an offense and is subject to sentencing under **AS 12.55.125(c), (d), (e), or (i)**
 2 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and

3 (1) the **low end of the** presumptive **range** [TERM] is four years or
 4 less, the court may **impose any sentence below the presumptive range** [DECREASE
 5 THE PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS THE
 6 PRESUMPTIVE TERM] for factors in mitigation or may increase the **active term of**
 7 **imprisonment** [PRESUMPTIVE TERM] up to the maximum term of imprisonment
 8 for factors in aggravation;

9 (2) the **low end of the** presumptive **range** [TERM OF
 10 IMPRISONMENT] is more than four years, the court may **impose a sentence below**
 11 **the presumptive range as long as the active term of imprisonment is not less than**
 12 **50 percent of the low end of the presumptive range** [DECREASE THE
 13 PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS 50 PERCENT OF THE
 14 PRESUMPTIVE TERM] for factors in mitigation or may increase the **active term of**
 15 **imprisonment** [PRESUMPTIVE TERM] up to the maximum term of imprisonment
 16 for factors in aggravation.

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

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

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

23 (c) The following factors shall be considered by the sentencing court **if**
 24 **proven in accordance with this section, and may allow imposition of a sentence**
 25 **above the presumptive range** [AND MAY AGGRAVATE THE PRESUMPTIVE
 26 TERMS] set out in AS 12.55.125:

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

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

31 (3) the defendant was the leader of a group of three or more persons

1 who participated in the offense;

2 (4) the defendant employed a dangerous instrument in furtherance of
3 the offense;

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

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

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

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

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

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

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

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

24 (13) the defendant knowingly directed the conduct constituting the
25 offense at an active officer of the court or at an active or former judicial officer,
26 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,
27 emergency medical technician, paramedic, ambulance attendant, or other emergency
28 responder during or because of the exercise of official duties;

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

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

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

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

8 (18) the offense was a felony

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

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

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

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

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

25 (21) the defendant has a criminal history of repeated instances of
26 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
27 similar in nature to the offense for which the defendant is being sentenced under this
28 section;

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

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

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

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

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

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

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

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

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

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

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

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

26 (30) the defendant is convicted of an offense specified in AS 11.41.410
27 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
28 the victim in furtherance of the offense with the intent to make the victim
29 incapacitated; in this paragraph, "incapacitated" has the meaning given in
30 AS 11.41.470;

31 **(31) the defendant's prior criminal history includes convictions for**

1 **five or more crimes in this or another jurisdiction that are class A misdemeanors**
 2 **under the law of this state, or having elements similar to a class A misdemeanor;**
 3 **two or more convictions arising out of a single continuous episode are considered**
 4 **a single conviction; however, an offense is not a part of a continuous episode if**
 5 **committed while attempting to escape or resist arrest or if it is an assault upon a**
 6 **uniformed or otherwise clearly identified peace officer; notice and denial of**
 7 **convictions are governed by AS 12.55.145(b), (c), and (d).**

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

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

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

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

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

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

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

25 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the
 26 defendant acted with serious provocation from the victim;

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

29 (8) [REPEALED]

30 (9) the conduct constituting the offense was among the least serious
 31 conduct included in the definition of the offense;

1 **(9)** [(10)] before the defendant knew that the criminal conduct had
2 been discovered, the defendant fully compensated or made a good faith effort to fully
3 compensate the victim of the defendant's criminal conduct for any damage or injury
4 sustained;

5 **(10)** [(11)] the defendant was motivated to commit the offense solely
6 by an overwhelming compulsion to provide for emergency necessities for the
7 defendant's immediate family;

8 **(11)** [(12)] the defendant assisted authorities to detect, apprehend, or
9 prosecute other persons who committed an offense;

10 **(12)** [(13)] the facts surrounding the commission of the offense and
11 any previous offenses by the defendant establish that the harm caused by the
12 defendant's conduct is consistently minor and inconsistent with the imposition of a
13 substantial period of imprisonment;

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

16 **(14)** [(15)] the defendant is convicted of an offense specified in
17 AS 11.71 and the offense involved the distribution of a controlled substance, other
18 than a schedule IA controlled substance, to a personal acquaintance who is 19 years of
19 age or older for no profit;

20 **(15)** [(16)] the defendant is convicted of an offense specified in
21 AS 11.71 and the offense involved the possession of a small amount of a controlled
22 substance for personal use in the defendant's home;

23 **(16)** [(17)] in a conviction for assault or attempted assault or for
24 homicide or attempted homicide, the defendant acted in response to domestic violence
25 perpetrated by the victim against the defendant and the domestic violence consisted of
26 aggravated or repeated instances of assaultive behavior;

27 **(17) except in the case of an offense defined under AS 11.41 or**
28 **AS 11.46.400, the defendant committed the offense while suffering from a mental**
29 **disorder or disability, including fetal alcohol spectrum disorder, that was**
30 **insufficient to constitute a complete defense but that significantly affected the**
31 **defendant's conduct.**

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

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

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

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

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

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

25 **(A) 20 days before trial, or at another time specified by the**
 26 **court;**

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

30 **(C) five days before entering a plea that results in a finding**
 31 **of guilt, or at another time specified by the court.**

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

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

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

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

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

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

30 (1) shall sentence the defendant **within** [TO] the presumptive **range**
 31 [TERM] required under AS 12.55.125 **or as permitted under AS 12.55.155;**

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

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

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

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

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

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

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

- 21 (1) geographic limitations on the probationer's movements;
22 (2) possessing or consuming controlled substances under state or
23 federal law;
24 (3) possessing firearms;
25 (4) possessing or consuming alcoholic beverages, or being in a place
26 where they are sold or served;
27 (5) operating or driving a motor vehicle; or
28 (6) other conduct that creates an imminent public danger or threatens
29 serious harm to persons or property.

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

31 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term

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

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

9 (2) a reasonable probability exists that

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

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

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

17 (3) the prisoner

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

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

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

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

30 (6) the prisoner is likely to remain subject to the severe medical or
 31 cognitive disability throughout the entire period of parole or to die and there is no

1 reasonable expectation that the prisoner's medical or cognitive disability will improve
2 noticeably; and

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

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

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

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

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

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

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

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

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

28 (3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and
29 (4), or (i), and has been allowed by the three-judge panel under AS 12.55.175 to be
30 considered for discretionary parole release during the second half of the sentence, may
31 not be released on discretionary parole until

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

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

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

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

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

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

16 (B) any term set under AS 12.55.115;

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

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

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

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

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

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

31 (A) the composite total of any mandatory minimum sentence or

1 sentences imposed under any provision of law, including AS 12.55.127;

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

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

8 (c) As used in this section,

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

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

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

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

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

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

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

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

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

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

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

8 * **Sec. 34.** This Act takes effect immediately under AS 01.10.070(c).