

**SENATE CS FOR CS FOR HOUSE BILL NO. 218(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/31/14

Referred: Rules

Sponsor(s): REPRESENTATIVES CHENAULT, MILLETT, HERRON, AND LYNN, Stoltze, Peggy Wilson, Johnson, Olson, Thompson

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the aggravating factor at felony sentencing of multiple prior**  
2 **misdemeanors when a prior misdemeanor involves an assault on a correctional**  
3 **employee; providing that deportation is not a proper factor for referral of a case to a**  
4 **three-judge panel for sentencing for a felony; and providing for an effective date."**

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

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

8 LEGISLATIVE INTENT. It is the intent of the legislature that AS 12.55.165(d),  
9 added by sec. 3 of this Act, and AS 12.55.175(g), added by sec. 4 of this Act, overturn the  
10 decision of the Alaska Court of Appeals in State v. Silvera, 309 P.3d 1277 (Alaska Ct. App.  
11 2013), and the Alaska Supreme Court in Dale v. State, 626 P.2d 1062 (Alaska 1980) to the  
12 extent that the decisions hold that the risk of deportation may be considered a basis for  
13 referral of a felony sentencing to a three-judge panel.

14 \* **Sec. 2.** AS 12.55.155(c) is amended to read:

1 (c) The following factors shall be considered by the sentencing court if proven  
2 in accordance with this section, and may allow imposition of a sentence above the  
3 presumptive range set out in AS 12.55.125:

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

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

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

10 (4) the defendant employed a dangerous instrument in furtherance of  
11 the offense;

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

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

19 (7) a prior felony conviction considered for the purpose of invoking a  
20 presumptive range under this chapter was of a more serious class of offense than the  
21 present offense;

22 (8) the defendant's prior criminal history includes conduct involving  
23 aggravated assaultive behavior, repeated instances of assaultive behavior, repeated  
24 instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a  
25 combination of assaultive behavior and cruelty to animals proscribed under  
26 AS 11.61.140(a)(1) and (3) - (5); in this paragraph, "aggravated assaultive behavior"  
27 means assault that is a felony under AS 11.41, or a similar provision in another  
28 jurisdiction;

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

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

1 (11) the defendant committed the offense under an agreement that the  
2 defendant either pay or be paid for the commission of the offense, and the pecuniary  
3 incentive was beyond that inherent in the offense itself;

4 (12) the defendant was on release under AS 12.30 for another felony  
5 charge or conviction or for a misdemeanor charge or conviction having assault as a  
6 necessary element;

7 (13) the defendant knowingly directed the conduct constituting the  
8 offense at an active officer of the court or at an active or former judicial officer,  
9 prosecuting attorney, law enforcement officer, correctional employee, firefighter,  
10 emergency medical technician, paramedic, ambulance attendant, or other emergency  
11 responder during or because of the exercise of official duties;

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

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

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

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

22 (18) the offense was a felony

23 (A) specified in AS 11.41 and was committed against a spouse,  
24 a former spouse, or a member of the social unit made up of those living  
25 together in the same dwelling as the defendant;

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

29 (C) specified in AS 11.41 that is a crime involving domestic  
30 violence and was committed in the physical presence or hearing of a child  
31 under 16 years of age who was, at the time of the offense, living within the

1 residence of the victim, the residence of the perpetrator, or the residence where  
2 the crime involving domestic violence occurred;

3 (D) specified in AS 11.41 and was committed against a person  
4 with whom the defendant has a dating relationship or with whom the defendant  
5 has engaged in a sexual relationship; or

6 (E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and  
7 the defendant was 10 or more years older than the victim;

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

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

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

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

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

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

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

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

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

31 (26) the defendant is convicted of an offense specified in AS 11.71 and

1 the offense involved the distribution of a controlled substance that had been  
2 adulterated with a toxic substance;

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

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

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

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

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

14 (30) the defendant is convicted of an offense specified in AS 11.41.410  
15 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
16 the victim in furtherance of the offense with the intent to make the victim  
17 incapacitated; in this paragraph, "incapacitated" has the meaning given in  
18 AS 11.41.470;

19 (31) the defendant's prior criminal history includes convictions for five  
20 or more crimes in this or another jurisdiction that are class A misdemeanors under the  
21 law of this state, or having elements similar to a class A misdemeanor; two or more  
22 convictions arising out of a single continuous episode are considered a single  
23 conviction; however, an offense is not a part of a continuous episode if committed  
24 while attempting to escape or resist arrest or if it is an assault on [UPON] a uniformed  
25 or otherwise clearly identified peace officer or correctional employee; notice and  
26 denial of convictions are governed by AS 12.55.145(b), (c), and (d);

27 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the  
28 offense occurred on school grounds, on a school bus, at a school-sponsored event, or  
29 in the administrative offices of a school district if students are educated at that office;  
30 in this paragraph,

31 (A) "school bus" has the meaning given in AS 11.71.900;

1 (B) "school district" has the meaning given in AS 47.07.063;

2 (C) "school grounds" has the meaning given in AS 11.71.900;

3 (33) the offense was a felony specified in AS 11.41.410 - 11.41.455,  
4 the defendant had been previously diagnosed as having or having tested positive for  
5 HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the  
6 victim to a risk or a fear that the offense could result in the transmission of HIV or  
7 AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in  
8 AS 18.15.310;

9 (34) the defendant committed the offense on, or to affect persons or  
10 property on, the premises of a recognized shelter or facility providing services to  
11 victims of domestic violence or sexual assault;

12 (35) the defendant knowingly directed the conduct constituting the  
13 offense at a victim because that person was 65 years of age or older.

14 \* **Sec. 3.** AS 12.55.165 is amended by adding a new subsection to read:

15 (d) A court may not refer a case to a three-judge panel under (a) of this section  
16 if the request for referral is based, in whole or in part, on the claim that a sentence  
17 within the presumptive range may result in the classification of the defendant as  
18 deportable under federal immigration law.

19 \* **Sec. 4.** AS 12.55.175 is amended by adding a new subsection to read:

20 (g) A defendant being sentenced under AS 12.55.125(c), (d), (e) or (i) may not  
21 establish, nor may a three-judge panel find under (b) of this section or any other  
22 provision of law, that manifest injustice would result from imposing a sentence within  
23 the presumptive range based, in whole or in part, on the claim that the sentence may  
24 result in the classification of the defendant as deportable under federal immigration  
25 law.

26 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
27 read:

28 **APPLICABILITY.** (a) Section 2 of this Act applies to offenses committed on or after  
29 the effective date of this Act.

30 (b) Sections 3 and 4 of this Act apply to offenses committed before, on, or after the  
31 effective date of this Act if the sentence is imposed on or after the effective date of this Act.

1      \* **Sec. 6.** This Act takes effect July 1, 2014.