

Original sponsor: Rules Committee by  
request of the Governor

Offered: 4/13/76  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 600

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sentencing."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 11.05.150 is amended to read:

9 Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in  
10 a case of murder or rape, or a case of a violent felony for which  
11 sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3), the  
12 court may, upon conviction, when in its opinion the facts and circum-  
13 stances make the minimum penalty provided in this title manifestly too  
14 severe, impose a lesser penalty, either of a fine or imprisonment or  
15 both. When less than the minimum penalty is imposed, the court shall  
16 set out the reasons for its action on the record in the case.

17 \* Sec. 2. AS 12.55 is amended by adding new sections to read:

18 Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every  
19 person convicted of a violent felony shall be sentenced as follows:

20 (1) for the first violent felony conviction, the court may  
21 sentence the defendant to a term of imprisonment, within the limits pre-  
22 scribed for the offense, or in accordance with AS 33.15.230 or secs. 80  
23 or 85 of this chapter;

24 (2) for the second violent felony conviction, the court shall  
25 sentence the defendant to a minimum term of imprisonment as follows:

26 (A) for first degree murder under AS 11.15.010 and AS  
27 11.15.020, 15 years;

28 (B) for second degree murder under AS 11.15.030, 12  
29 years;

- 1 (C) for manslaughter under AS 11.15.040, 8 years;  
2 (D) for negligent homicide under AS 11.15.080, 8 years;  
3 (E) for forcible rape as defined in AS 11.15.120, 10  
4 years;  
5 (F) for mayhem under AS 11.15.140, 5 years;  
6 (G) for shooting, stabbing or cutting with intent to  
7 kill, wound or maim under AS 11.15.150, 5 years;  
8 (H) for assault with intent to kill or commit rape or  
9 robbery under AS 11.15.160, 5 years;  
10 (I) for assault while armed under AS 11.15.190, 3 years;  
11 (J) for poisoning under AS 11.15.210, 5 years;  
12 (K) for assault with a dangerous weapon under AS 11.15.-  
13 220, 3 years;  
14 (L) for robbery under AS 11.15.240, 7 years;  
15 (M) for kidnapping under AS 11.15.260, 7 years;  
16 (N) for first degree arson under AS 11.20.010, 5 years;  
17 (O) for assault on an officer in penitentiary under AS  
18 11.30.140, 2 years;  
19 (P) for assault on an officer in jail under AS 11.30.160,  
20 2 years;  
21 (3) for the third or subsequent violent felony conviction,  
22 the court shall sentence the defendant to a minimum term of imprison-  
23 ment,  
24 (A) for first degree murder under AS 11.15.010 and AS  
25 11.15.020, 20 years;  
26 (B) for second degree murder under AS 11.15.030, 15  
27 years;  
28 (C) for manslaughter under AS 11.15.040, 12 years;  
29 (D) for negligent homicide under AS 11.15.080, 12 years;

1 (E) for forcible rape as defined in AS 11.15.120, 15  
2 years;

3 (F) for mayhem under AS 11.15.140, 7 years;

4 (G) for shooting, stabbing or cutting with intent to  
5 kill, wound or maim under AS 11.15.150, 7 years;

6 (H) for assault with intent to kill or commit rape or  
7 robbery under AS 11.15.160, 7 years;

8 (I) for assault while armed under AS 11.15.190, 5 years;

9 (J) for poisoning under AS 11.15.210, 7 years;

10 (K) for assault with a dangerous weapon under AS 11.15.-  
11 220, 5 years;

12 (L) for robbery under AS 11.15.240, 10 years;

13 (M) for kidnapping under AS 11.15.260, 10 years;

14 (N) for first degree arson under AS 11.20.010, 7 years;

15 (O) for assault on an officer in a penitentiary under  
16 AS 11.30.140, 5 years;

17 (P) for assault on an officer in a jail under AS 11.30.-  
18 160, 5 years;

19 (b) For purposes of this section,

20 (1) no prior convictions will be considered when a period of  
21 5 or more years has elapsed between the date of discharge from disposi-  
22 tion of the immediately preceding offense and the date of the commission  
23 of the violent felony for which sentencing is being rendered.

24 (2) a conviction in another jurisdiction which would amount  
25 to a violent felony conviction under the laws of this state is con-  
26 sidered a prior violent felony conviction;

27 (3) two or more convictions arising out of the same incident  
28 are considered a single conviction.

29 (c) For conviction of a second or subsequent violent felony under

1 (a)(2) or (3) of this section

2 (1) imprisonment may not be suspended under AS 12.55.080 and  
3 probation or parole may not be granted;

4 (2) imposition of sentence may not be suspended under AS  
5 12.55.085; and

6 (3) terms of imprisonment may not be reduced under AS 11.05.-  
7 150.

8 (d) Nothing in this section limits the authority of the court to  
9 impose fines for offenses, where authorized, in addition to the required  
10 term of imprisonment.

11 (e) In this section "violent felony" means the crimes listed in  
12 (a)(2) and (3) of this section.

13 Sec. 12.55.037. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS. (a)  
14 If it appears that a defendant has previously been convicted of a  
15 violent felony and is subject to sentencing as a second or subsequent  
16 offender under sec. 35 of this chapter, the district attorney shall file  
17 a certified copy of the record of prior convictions with the court  
18 before sentencing.

19 (b) If the defendant denies the truth of the certified copy of  
20 the record of prior convictions, the court shall hold a hearing, without  
21 a jury, on the matter before sentencing. At the hearing, the only  
22 issues before the court are whether the record of prior convictions is  
23 that of the defendant and whether the conviction occurred within the  
24 period specified in sec. 35(b)(1) of this chapter. The burden of proof  
25 is on the state to establish beyond a reasonable doubt the fact of prior  
26 convictions.

27 \* Sec. 3. AS 12.55.060 is amended to read:

28 Sec. 12.55.060. PROCEDURE UPON DISCOVERY OF PRIOR CONVICTIONS.

29 (a) Before conviction or while sentence is effective, if it appears

1 that a person convicted of a crime in this state has previously been  
2 convicted and has not been charged under sec. [SECS. 40 AND] 50 of this  
3 chapter, the district attorney may file an information in the superior  
4 court accusing that person of the previous conviction or convictions.  
5 The court shall cause that person, whether confined in prison or other-  
6 wise, to be brought before it and shall inform him of the allegations  
7 contained in the information and of his right to be tried as to the  
8 truth of the allegations, and shall inquire of [REQUIRE] the accused  
9 person [TO SAY] whether or not he is the same person as charged in the  
10 information. If the accused acknowledges or confesses in open court,  
11 after being cautioned as to his rights, that he was previously convicted  
12 of the crimes charged, or any of them, the court shall sentence him as  
13 provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the  
14 previous sentence, deducting from the new sentence all time actually  
15 served on the sentence so vacated. If the accused says he is not the  
16 same person, or refuses to answer, or remains silent, the court shall  
17 examine the charge of previous convictions, which shall be the only  
18 matter in issue.

19 (b) If it appears from the examination that there is sufficient  
20 cause to believe the accused has been previously convicted as charged in  
21 the information, the accused shall be committed to await the action of  
22 the grand jury, which shall consider only the fact of previous convic-  
23 tions of the accused. If the grand jury indicts the accused and he says  
24 he is not the same person, or refuses to answer, or remains silent, he  
25 shall be tried by jury in the superior court, and the only issue before  
26 the jury shall be whether the accused was previously convicted as  
27 charged. If the jury finds that the accused is the same person pre-  
28 viously convicted as charged, or if, after being cautioned as to his  
29 rights, the accused acknowledges or confesses in open court that he was

1 previously convicted as charged, the court shall sentence him as pro-  
2 vided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the  
3 previous sentence.

4 (c) The accused may be admitted to bail either while awaiting  
5 examination, action of the grand jury, or trial.

6 \* Sec. 4. AS 33.15.180 is amended to read:

7 Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state pri-  
8 soner other than a minor under age 18 [JUVENILE DELINQUENT], wherever  
9 confined and serving a definite term of over 180 days or a term the  
10 minimum of which is at least 181 days, and who is not confined as a  
11 second or subsequent offender under AS 12.55.035, whose record shows  
12 that he has observed the rules of the institution in which he is con-  
13 fined, may, in the discretion of the board, be released on parole,  
14 subject to the limitation prescribed in secs. 80 and 230(a)(1) of this  
15 chapter.

16 (b) A state prisoner confined as a second or subsequent offender  
17 under AS 12.55.035 may not be considered for parole.

18 \* Sec. 5. AS 33.20.010 is repealed and re-enacted to read:

19 Sec. 33.20.010. COMPUTATION OF GOOD TIME. (a) Each prisoner  
20 convicted of an offense against the state and sentenced to confinement  
21 in a penal or correctional institution, whose record of conduct shows  
22 that he has faithfully observed the rules of that institution and has  
23 not been subject to discipline, is entitled to a deduction from the term  
24 of his sentence of one day for every day of good conduct served.

25 (b) Good time earned in excess of 30 days is not subject to  
26 forfeiture for a subsequent infraction, misconduct, or crime.

27 \* Sec. 6. AS 12.55.040, 33.20.020 and 33.20.040 are repealed.

28 \* Sec. 7. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of this  
29 Act, applies to sentencing upon convictions only for violent felonies

1 committed after the effective date of this Act. When sentencing for those  
2 convictions, the court shall consider prior convictions for violent felonies  
3 whether committed before or after the effective date of this Act.

4 (b) AS 33.15.180, as amended in sec. 4 of this Act, applies to persons  
5 imprisoned for violent felonies committed after the effective date of this  
6 Act.

7 (c) AS 33.20.010, as amended in sec. 5 of this Act, applies to all  
8 persons imprisoned in state institutions on the effective date of this Act,  
9 but is not retroactive in application.

10 \* Sec. 8. INTENT. Section 2 of this Act is intended to strengthen  
11 present imprisonment provisions rather than lower minimum terms required by  
12 statute, especially those minimum terms provided in AS 11.15.010, 11.15.020  
13 and 11.15.030. Under sec. 2 of this Act, a second or subsequent offender  
14 does not have available to him provisions for reduction or suspension of  
15 sentence.

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