

Original Sponsor: Rules Committee by
request of the Governor

Offered: 5/16/76
For Today's Calendar

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 600 (Rules)

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 presumptive sentencing for certain
7 violent felonies."

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

9 * Section 1. AS 11.05.150 is amended to read:

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

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

19 Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every per-
20 son convicted of a violent felony shall be sentenced as follows:

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

25 (2) for the second violent felony conviction, the court shall
26 impose sentence pursuant to the presumptive terms set out in this para-
27 graph, subject to adjustment for aggravating and mitigating factors
28 provided in secs. 36 and 37 of this chapter,

29 (A) for first degree murder under AS 11.15.010 and

1 AS 11.15.020, 15 years;

2 (B) for second degree murder under AS 11.15.030, 12
3 years;

4 (C) for manslaughter under AS 11.15.040, eight years;

5 (D) for forcible rape as defined in AS 11.15.120, eight
6 years;

7 (E) for mayhem under AS 11.15.140, ten years;

8 (F) for shooting, stabbing or cutting with intent to
9 kill, wound or maim under AS 11.15.150, five years;

10 (G) for assault with intent to kill or commit rape or
11 robbery under AS 11.15.160, five years;

12 (H) for poisoning under AS 11.15.210, five years;

13 (I) for assault with a dangerous weapon under AS 11.15.-
14 220, three years;

15 (J) for robbery under AS 11.15.240, six years;

16 (K) for kidnapping under AS 11.15.260, eight years;

17 (L) for first degree arson under AS 11.20.010, five
18 years;

19 (M) for burglary in a dwelling house under AS 11.20.080,
20 three years;

21 (3) for the third or subsequent violent felony conviction,
22 the court shall sentence the defendant to a presumptive term of impri-
23 sonment, for

24 (A) first degree murder under AS 11.15.010 and AS 11.15.-
25 020, 20 years;

26 (B) second degree murder under AS 11.15.030, 15 years;

27 (C) manslaughter under AS 11.15.040, 12 years;

28 (D) forcible rape as defined in AS 11.15.120, ten years;

29 (E) mayhem under AS 11.15.140, 12 years;

1 (F) shooting, stabbing or cutting with intent to kill,
2 wound or maim under AS 11.15.150, seven years;

3 (G) assault with intent to kill or commit rape or rob-
4 bery under AS 11.15.160, eight years;

5 (H) poisoning under AS 11.15.210, seven years;

6 (I) assault with a dangerous weapon under AS 11.15.220,
7 five years;

8 (J) robbery under AS 11.15.240, eight years;

9 (K) kidnapping under AS 11.15.260, 12 years;

10 (L) first degree arson under AS 11.20.010, seven years;

11 (M) burglary in a dwelling house under AS 11.20.080,
12 five years.

13 (b) For purposes of this section,

14 (1) no prior convictions will be considered when a period of
15 five or more years has elapsed between the date of conviction for the
16 immediately preceding offense and the date of the conviction for the
17 violent felony at bar;

18 (2) a conviction in another jurisdiction of an offense, the
19 elements of which are substantially identical with those of any of the
20 crimes included in sec. 35 of this chapter, shall be considered a prior
21 violent felony conviction;

22 (3) two or more convictions arising out of the same trans-
23 action are considered a single conviction.

24 (c) For conviction of a second or subsequent violent felony under
25 (a)(2) or (3) of this section

26 (1) imprisonment may not be suspended under sec. 80 of this
27 chapter and probation or parole may not be granted;

28 (2) imposition of sentence may not be suspended under sec. 85
29 of this chapter; and

1 (3) terms of imprisonment may not be reduced under AS 11.05.-
2 150.

3 (d) Nothing in this section shall limit the discretion of the
4 sentencing judge in any manner except as specifically provided.

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

7 Sec. 12.55.036. FACTORS IN AGGRAVATION AND MITIGATION. (a) After
8 considering the relevant circumstances, if the court finds that the
9 defendant's participation in the second or subsequent violent felony at
10 bar was characterized by one or more of the aggravating factors de-
11 scribed below, the applicable presumptive term may be increased by up to
12 50 per cent of such term

13 (1) that the victim or victims of the crime sustained great
14 bodily injury as a direct result of the defendant's conduct; "great
15 bodily injury" means bodily injury which creates a substantial risk of
16 death or which causes serious, permanent disfigurement or protracted
17 loss or impairment of the function of any body member or organ;

18 (2) that the defendant discharged a firearm in the course of
19 the offense, either with intent to inflict injury on another person or
20 under circumstances manifesting a reckless disregard for the lives or
21 safety of other persons;

22 (3) that the defendant's actions included the deliberate
23 infliction of cruelty upon another person, beyond that which is inherent
24 of the offense alone;

25 (4) in any conviction for burglary in a dwelling house under
26 AS 11.20.080, that the defendant entered the dwelling in the nighttime,
27 armed with a dangerous weapon, and that another person was present in
28 the dwelling at the time of the defendant's entry; or, regardless of
29 the time of the defendant's entry, that the defendant actually

1 threatened another person with a dangerous weapon in the course of the
2 felony;

3 (5) in any conviction for first degree arson under AS 11.20.--
4 010, that the defendant knew or reasonably should have known that the
5 dwelling or structure was occupied at the time the fire was set;

6 (6) that the defendant led a criminal enterprise consisting
7 of three or more persons who participated in the felony at bar;

8 (7) that the victim or victims of the defendant's crime were
9 particularly weak or vulnerable by reason of extreme youth or age or by
10 reason of a physical or mental infirmity or disability.

11 (b) After consideration of the relevant circumstances, if the
12 court finds that the defendant's participation in the second or subse-
13 quent violent felony at bar was characterized by one or more of the
14 mitigating circumstances described below, the applicable presumptive
15 term may be reduced by up to 50 per cent of such term

16 (1) that the defendant suffered at the time of the offense
17 from a mental disease, defect or impairment which, although not suf-
18 ficient to constitute a complete defense to the charge, significantly
19 diminished his capacity either to conform his conduct to the requirements
20 of the law or to appreciate the wrongfulness of such conduct; neither
21 voluntary drunkenness, chronic alcoholism, voluntary drug intoxication
22 or addiction to drugs shall, in themselves, be sufficient factors to
23 mitigate any applicable presumptive penalty;

24 (2) that the defendant acted under the influence of an intense
25 emotional disturbance resulting from serious provocation from the victim,
26 or from another person whom the defendant intended to assault when he
27 negligently or accidentally harmed the victim; "serious provocation"
28 is defined as conduct sufficient to excite an intense passion in a
29 reasonable person in the defendant's position, but does not include

1 mere insulting words or gestures or mere heresay reports of provocative
2 conduct by the victim or intended victim;

3 (3) that the defendant, although responsible under law as an
4 accomplice, in fact contributed only minimally to the felony in question;

5 (4) where the criminal plan or act was principally accom-
6 plished by another person or persons, that the defendant's acts mani-
7 fested extreme caution or evidenced concern for the safety or well-being
8 of the victim or victims;

9 (5) that the defendant committed the crime under some degree
10 of duress, coercion, threat or compulsion, insufficient to constitute
11 a complete defense, but which significantly affected his conduct;

12 (6) in any case of burglary in a dwelling or robbery, that
13 the defendant reasonably believed that he had a claim of right to the
14 property;

15 (7) that the defendant, although guilty of the crime, com-
16 mitted the crime under such unusual circumstances that it is unlikely
17 a sustained intent to violate the law motivated his conduct.

18 Sec. 12.55.037. NOTICE, HEARING AND FINDINGS. (a) The presump-
19 tive sentencing terms in sec. 36 of this chapter may not be invoked
20 except upon reasonable notice to the defendant and after a hearing in
21 open court. Prior violent felony convictions under sec. 35 of this
22 chapter must be proved beyond a reasonable doubt at such hearing. The
23 burden of proving factors in aggravation shall be upon the prosecution
24 and by clear and convincing evidence. If the defendant seeks to estab-
25 lish mitigating circumstances, he must do so by a preponderance of the
26 evidence. In any case in which a sentence is imposed under this sec-
27 tion, the judge shall make specific written findings with respect to any
28 applicable aggravating or mitigating factors.

29 (b) If the court finds that (1) the circumstances of the felony

1 at bar were extraordinary, (2) imposition of the presumptive term would
2 result in a failure to protect the public or in a clear and manifest
3 injustice to the accused, or (3) extraordinary circumstances exist
4 which do not fall within the aggravating or mitigating factors set out
5 in the preceding paragraphs, the court shall make written findings in
6 the matter and cause these findings to be certified to the presiding
7 judge of the judicial district or, if he himself is the presiding judge,
8 to the administrative director of courts.

9 (c) The presiding judge or administrative director shall forth-
10 with constitute a panel consisting of three superior court judges to
11 hear the matter.

12 (d) Sentencing in such case shall be imposed only by a majority
13 of the three-judge court after consideration of all pertinent files,
14 records, and transcripts, including the findings and conclusions of
15 the judge who originally heard the matter. The three-judge court may,
16 in its discretion, hear oral testimony.

17 (e) The three-judge court may in the interest of justice or public
18 protection sentence the defendant under any law applicable to the
19 offense in question, notwithstanding the presumptive penalties provided
20 in this chapter.

21 Sec. 12.55.038. TRANSCRIPTS OF SENTENCING PROCEEDINGS, AND COPIES
22 OF JUDGMENT. When any person is sentenced under this chapter, the
23 judge's remarks at the time of imposition of sentence together with a
24 copy of the judgment and sentence of the court and the written findings
25 shall be furnished by the Department of Law to the victim or victims of
26 the crime as well as to the investigating policy officer assigned to the
27 prosecution. All transcripts and copies of court documents shall be
28 provided to the victim or victims without charge.

29 * Sec. 3. AS 33.15.180 is amended to read:

1 Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state
2 prisoner other than a juvenile delinquent, wherever confined and serving
3 a definite term of over 180 days or a term the minimum of which is at
4 least 181 days, and who is not confined as a second or subsequent
5 offender under AS 12.55.035, whose record shows that he has observed the
6 rules of the institution in which he is confined, may, in the discretion
7 of the board, be released on parole, subject to the limitation pre-
8 scribed in secs. 80 and 230(a)(1) of this chapter.

9 (b) A state prisoner confined as a second or subsequent offender
10 under AS 12.55.035 et seq. may not be considered for parole.

11 * Sec. 4. AS 33.20.010 is repealed and re-enacted to read:

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

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

20 * Sec. 5. AS 12.55.040, AS 33.20.020 and 33.20.040 are repealed.

21 * Sec. 6. APPLICABILITY. (a) AS 12.55.035 - 12.55.037 as enacted in
22 this Act, apply to sentencing upon conviction only for violent felonies com-
23 mitted after the effective date of this Act. When sentencing for those
24 convictions, the court shall consider prior convictions for violent felonies
25 whether committed before or after the effective date of this Act.

26 (b) AS 33.15.180, as amended in sec. 3 of this Act, applies to persons
27 imprisoned for violent felonies committed after the effective date of
28 this Act.

29 (c) AS 33.20.010, as amended in sec. 4 of this Act, applies to all
CSHB 600(Rules)

1 persons imprisoned in state institutions on the effective date of this
2 Act, but is not retroactive in application.

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