

1 IN THE HOUSE

BY BROWN, GARDINER,
AND MILLER

2 HOUSE BILL NO. 32

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST 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, the
13 court may, upon conviction, when in its opinion the facts and circum-
14 stances make the minimum penalty provided in this title manifestly too
15 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 fine or imprisonment, within the limits pre-
23 scribed for the offense, and may invoke the provisions of AS 33.15.230
24 and sec. 80 or 85 of this chapter;

25 (2) for the second violent felony conviction, the court shall
26 impose sentence in accordance with the presumptive terms set out in this
27 paragraph, 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, fifteen years;

2 (B) for second degree murder under AS 11.15.030, twelve
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 impose sentence in accordance with the presumptive terms
23 set out in this paragraph, subject to adjustment for aggravating and
24 mitigating factors provided in secs. 36 and 37 of this chapter, as
25 follows:

26 (A) first degree murder under AS 11.15.010 and AS 11.15.
27 020, twenty years;

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

- 1 (C) manslaughter under AS 11.15.040, twelve years;
2 (D) forcible rape as defined in AS 11.15.120, ten years;
3 (E) mayhem under AS 11.15.140, twelve years;
4 (F) shooting, stabbing or cutting with intent to kill,
5 wound or main under AS 11.15.150, seven years;
6 (G) assault with intent to kill or commit rape or rob-
7 bery under AS 11.15.160, eight years;
8 (H) poisoning under AS 11.15.210, seven years;
9 (I) assault with a dangerous weapon under AS 11.15.220,
10 five years;
11 (J) robbery under AS 11.15.240, eight years;
12 (K) kidnapping under AS 11.15.260, twelve years;
13 (L) first degree arson under AS 11.20.010, seven years;
14 (M) burglary in a dwelling house under AS 11.20.080,
15 five years.

16 (b) For purposes of this section,

17 (1) no prior convictions will be considered when a period of
18 five or more years has elapsed between the date of discharge from
19 disposition of the immediately preceding offense and the date of the
20 conviction for the violent felony at bar;

21 (2) a conviction in another jurisdiction of an offense, the
22 elements of which are substantially identical with those of any of the
23 crimes included in this section, shall be considered a prior violent
24 felony conviction;

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

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

29 (1) imprisonment may not be suspended under sec. 80 of this

1 chapter and probation or parole may not be granted;

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

4 (3) terms of imprisonment may not be reduced under AS 11.05.-
5 150.

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

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

10 Sec. 12.55.036. FACTORS IN AGGRAVATION AND MITIGATION. (a) After
11 considering the relevant circumstances, if the court finds that the
12 defendant's participation in the second or subsequent violent felony at
13 bar was characterized by one or more of the aggravating factors de-
14 scribed in (1) - (7) of this subsection, the applicable presumptive term
15 may be increased by up to 50 per cent of that term:

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

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

25 (3) the defendant's actions included the deliberate inflic-
26 tion of cruelty upon another person, beyond that which is inherent of
27 the offense alone;

28 (4) in any conviction for burglary in a dwelling house under
29 AS 11.20.080, the defendant entered the dwelling in the nighttime, armed

1 a dangerous weapon in the course of the felony;

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

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

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

10 (b) After consideration of the relevant circumstances, if the
11 court finds that the defendant's participation in the second or subse-
12 quent violent felony at bar was characterized by one or more of the
13 mitigating circumstances described in (1) - (7) of this subsection, the
14 applicable presumptive term may be reduced by up to 50 per cent of that
15 term:

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

24 (2) the defendant acted under the influence of an intense
25 emotional disturbance resulting from serious provocation from the
26 victim, or from another person whom the defendant intended to assault
27 when he negligently or accidentally harmed the victim; "serious provo-
28 cation" is defined as conduct sufficient to excite an intense passion in
29 a 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) the defendant, although responsible under law as an
4 accomplice, in fact contributed only minimally to the felony in ques-
5 tion;

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

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

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

16 (7) the defendant, although guilty of the crime, committed
17 the crime under such unusual circumstances that it is unlikely a sus-
18 tained intent to violate the law motivated his conduct.

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

1 (b) If the court finds that (1) the circumstances of the felony at
2 bar were extraordinary, (2) imposition of the presumptive term would
3 result in a failure to protect the public or in a clear and manifest
4 injustice to the accused, or (3) extraordinary circumstances exist which
5 do not fall within the aggravating or mitigating factors set out in sec.
6 36 of this chapter and (1) and (2) of this subsection, the court shall
7 make written findings in the matter and cause these findings to be
8 certified to the presiding judge of the judicial district or, if he
9 himself is the presiding judge, to the administrative director of
10 courts.

11 (c) The presiding judge or administrative director shall immedi-
12 ately constitute a panel consisting of three superior court judges to
13 hear the matter.

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

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

23 Sec. 12.55.038. TRANSCRIPTS OF SENTENCING PROCEEDINGS, AND COPIES
24 OF JUDGMENT. When any person is sentenced under this chapter, the
25 judge's remarks at the time of imposition of sentence together with a
26 copy of the judgment and sentence of the court and the written findings
27 shall be furnished by the Department of Law to the victim or victims of
28 the crime as well as to the investigating police officer assigned to the
29 prosecution. All transcripts and copies of court documents shall be

1 provided to the victim or victims without charge.

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

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

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

13 * Sec. 4. AS 33.20.010 is amended to read:

14 Sec. 33.20.010. COMPUTATION OF GOOD TIME FOR NONVIOLENT FELONIES
15 [GENERALLY]. (a) Each prisoner convicted of an offense against the
16 state other than a second or subsequent violent felony and confined in a
17 penal or correctional institution for a definite term other than for
18 life, whose record of conduct shows that he has faithfully observed all
19 the rules and has not been subject to punishment, is entitled to a de-
20 duction from the term of his sentence beginning with the day on which
21 the sentence starts to run, as follows:

22 (1) five days for each month, if the sentence is not less
23 than six months and not more than one year;

24 (2) six days for each month, if the sentence is more than one
25 year and less than three years;

26 (3) seven days for each month, if the sentence is not less
27 than three years and less than five years;

28 (4) eight days for each month, if the sentence is not less
29 than five years and less than ten years;

1 (5) ten days for each month, if the sentence is ten years or
2 more.

3 (b) When two or more consecutive sentences are served, the basis
4 upon which the deduction is computed is the aggregate of the several
5 sentences.

6 * Sec. 5. AS 33.20 is amended by adding a new section to read:

7 Sec. 33.20.012. COMPUTATION OF GOOD TIME FOR SECOND AND SUBSEQUENT
8 VIOLENT FELONIES. (a) Each prisoner convicted of a violent felony
9 against the state and sentenced to confinement in a penal or correc-
10 tional institution under the presumptive terms of AS 12.55.035 - 12.55.-
11 037, whose record of conduct shows that he has faithfully observed the
12 rules of that institution and has not been subject to discipline, is
13 entitled to a deduction from the term of his sentence of one day for
14 every day of good conduct served.

15 (b) Good time earned in excess of 30 days under this section is
16 not subject to forfeiture for a subsequent infraction, misconduct, or
17 crime.

18 * Sec. 6. AS 12.55.040 and AS 33.20.040 are repealed.

19 * Sec. 7. APPLICABILITY. (a) AS 12.55.035 - 12.55.038, as enacted in
20 this Act, apply to sentencing upon conviction only for violent felonies
21 committed after the effective date of this Act. When sentencing for those
22 convictions, the court shall consider prior convictions for violent felonies
23 whether committed before or after the effective date of this Act.

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

27 (c) AS 33.20.012, as enacted in this Act, applies to all persons
28 sentenced to the presumptive terms of sec. 2 of this Act.

29 (d) AS 33.20.010, as amended in this Act, applies only to persons

1 imprisoned after the effective date of this Act.

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