

Introduced: 3/3/77  
Referred: Judiciary

BY THE RULES COMMITTEE BY REQUEST  
OF THE GOVERNOR (with the Judicial  
Council)

1 IN THE HOUSE

2 HOUSE BILL NO. 297

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 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  
10 in a case of murder or a case of a classified felony for which pre-  
11 sumptive sentencing is imposed in accordance with AS 12.55.035 [RAPE]  
12 the court may, upon conviction, when in its opinion the facts and  
13 circumstances make the minimum penalty provided in this title manifest-  
14 ly too severe, impose a lesser penalty, either of a fine or imprison-  
15 ment or both. When less than the minimum penalty is imposed, the  
16 court shall set out the reasons for its action on the record of the  
17 case.

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

19 Sec. 12.55.005. DECLARATION OF PURPOSE. (a) The purpose of this  
20 chapter is to provide a means for determining the appropriate sentence  
21 to be rendered upon conviction for a criminal offense. In imposing  
22 sentence, the court should use the least severe measures to accomplish  
23 the desired results through imposition of a sentence deserved by the  
24 offender in proportion to the seriousness of the offense, considering

25 (1) the seriousness of the offense in relation to other  
26 offenses;

27 (2) the nature of the offense and the extent to which it  
28 endangered the public safety or order;

29 (3) the isolation of the offender to prevent further

1 criminal conduct during the period of confinement;

2 (4) the effect of the sentence imposed in deterring the  
3 offender or other members of society from future criminal conduct;

4 (5) the effect of the sentence imposed as community con-  
5 demnation of the criminal act and as a reaffirmation of societal  
6 norms;

7 (6) the likelihood of rehabilitation of the offender into a  
8 non-criminal member of society.

9 (b) The legislature finds that the primary purpose of imprison-  
10 ment is punishment and the secondary purpose is deterrence.

11 (c) The legislature further finds that the elimination of un-  
12 justified disparity in sentencing and the attainment of reasonable  
13 uniformity of sentences can best be achieved through determinate  
14 sentences fixed by statute in proportion to the seriousness of the  
15 offense, to be imposed within specific limits of judicial discretion  
16 as provided in this chapter.

17 Sec. 12.55.007. SENTENCING ALTERNATIVES. (a) In imposing  
18 sentence upon a person convicted of a criminal offense, the sentencing  
19 court may, singly or in combination,

20 (1) impose payment of a fine when authorized by law;

21 (2) order the defendant to be placed on probation under  
22 conditions specified by the court which may include provision for  
23 active supervision;

24 (3) impose a split sentence of continuous or periodic im-  
25 prisonment in conjunction with a program of probation under conditions  
26 specified by the court;

27 (4) impose a term of periodic imprisonment;

28 (5) impose a term of continuous imprisonment;

29 (6) order the offender to make restitution;

1 (7) order the offender to carry out a continuous or periodic  
2 program of specific service to the community; or

3 (8) suspend imposition of sentence in accordance with sec.  
4 85 of this chapter.

5 (b) In selecting from among the available sentencing alter-  
6 natives and considering the purposes of sentencing as set out in sec.  
7 5 of this chapter, the court shall impose a sentence involving impri-  
8 sonment when

9 (1) the term of imprisonment is deserved in relation to the  
10 seriousness of the offense and the criminal history of the offender,  
11 and is equitable in relation to punishments imposed for other offenses  
12 and offenders having due regard for the classifications established  
13 under sec. 33 of this chapter;

14 (2) the term of imprisonment is necessary to protect society  
15 by incapacitating the offender; or

16 (3) a sentence of lesser severity has been employed in the  
17 past and proven ineffective in deterring the offender and protecting  
18 society.

19 (c) In imposing sentence, the court shall set out its reasons on  
20 the record with specific reference to the purposes of sentencing set  
21 out in sec. 5 of this chapter.

22 (d) Nothing in this section deprives the court of any authority  
23 conferred by law to decree a forfeiture of property, suspend or revoke  
24 a license, remove a person from office, or impose any other civil  
25 penalty.

26 Sec. 12.55.033. CLASSIFICATION OF FELONIES. (a) All felonies  
27 are classified on the basis of their seriousness, taking into account  
28 the degree of injury characteristically caused or risked by the offense  
29 and the degree of culpability of the offender.

1 (b) Felonies are classified as

2 (1) first degree murder under AS 11.15.010 and 11.15.020;

3 (2) Class A felonies, which include felonies characteristi-  
4 cally involving aggravated violence against a person, or great risk of  
5 such violence;

6 (3) Class B felonies, which include felonies characteristi-  
7 cally involving less severe violence against a person, aggravated  
8 offenses against property, or aggravated offenses against public  
9 order; and

10 (4) Class C felonies, which include all felonies not other-  
11 wise classified as first degree murder, Class A or Class B.

12 Sec. 12.55.035. SENTENCING FOR CLASS A FELONIES. (a) Every  
13 person convicted of a Class A felony shall be sentenced to the follow-  
14 ing presumptive terms subject to adjustment as provided in sec. 42 of  
15 this chapter:

16 (1) for a first Class A felony conviction, the presumptive  
17 terms are:

18 (A) for second degree murder under AS 11.15.030, 25  
19 years;

20 (B) for manslaughter under AS 11.15.040, 10 years;

21 (C) for forcible rape under AS 11.15.120, eight years;

22 (D) for mayhem under AS 11.15.140, six years;

23 (E) for shooting, stabbing or cutting with intent to  
24 kill, wound, or maim, under AS 11.15.150, eight years;

25 (F) for assault with intent to kill or commit rape or  
26 robbery under AS 11.15.160, six years;

27 (G) for assault while armed under AS 11.15.190, two  
28 years;

29 (H) for poisoning under AS 11.15.210, eight years;

1 (I) for assault with a dangerous weapon under AS  
2 11.15.220, two years;

3 (J) for aggravated assault under AS 11.15.225, three  
4 years;

5 (K) for robbery under AS 11.15.240, six years;

6 (L) for kidnapping under AS 11.15.260, 20 years;

7 (M) for burglary in a dwelling when occupied by another  
8 under AS 11.20.080, two years;

9 (N) for assault on a correctional officer under AS  
10 11.30.140 or AS 11.30.160, three years;

11 (2) for a second Class A felony conviction, the presumptive  
12 term is the term set out in (a)(1) of this section increased by 50 per  
13 cent;

14 (3) for a third or subsequent Class A felony conviction,  
15 the presumptive term is twice the term set out in (a)(1) of this  
16 section; when any factor in aggravation included in sec. 42 of this  
17 chapter is present, the court may sentence the defendant to any term  
18 of years up to the maximum provided by law.

19 (b) For purposes of this section,

20 (1) no previous convictions will be considered when a  
21 period of seven or more years, excluding any periods of incarceration,  
22 has elapsed between the date of conviction for the immediately pre-  
23 ceding offense and the date of the commission of the present Class A  
24 felony;

25 (2) a conviction in another jurisdiction for an offense  
26 having elements substantially identical to those of any of the Class A  
27 felonies included in (a) of this section is considered a Class A  
28 felony conviction;

29 (3) two or more convictions arising out of a single sub-

1           stantially contemporaneous course of criminal conduct are considered a  
2           single conviction;

3           (4) a conviction in this or another jurisdiction for an  
4           offense having elements substantially identical to those of first  
5           degree murder under AS 11.15.010 or 11.15.020, is considered a pre-  
6           vious Class A felony conviction.

7           (c) If a defendant is sentenced as a Class A felony offender  
8           under (a) of this section, unless (d) of this section is applicable or  
9           the defendant is sentenced under secs. 43 and 44 of this chapter:

10           (1) imprisonment may not be suspended under sec. 80 of this  
11           chapter, and probation or parole except under AS 33.15.180(b) may not  
12           be granted;

13           (2) imposition of sentence may not be suspended under sec.  
14           85 of this chapter;

15           (3) terms of imprisonment may not be reduced under AS  
16           11.05.150.

17           (d) If a defendant is subject to sentencing under (a)(1) of this  
18           section and has not been convicted previously of any other felony, or  
19           of more than one misdemeanor having assault as a necessary element,  
20           and if the defendant neither caused physical injury to any person nor  
21           employed a firearm, whether loaded or not, in furtherance of the  
22           offense, the court may suspend all or any portion of the presumptive  
23           term, and may suspend imposition of sentence under sec. 85 of this  
24           chapter.

25           (e) For the purpose of determining prior convictions under  
26           (a)(2) and (3) of this section, first degree murder is considered a  
27           Class A felony.

28           (f) Nothing in this section limits the discretion of the sen-  
29           tencing judge in any manner except as specifically provided.

1           Sec. 12.55.041. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS.

2           (a) In imposing sentence under sec. 35 (a)(2) and (3) of this chapter,  
3 prior convictions not expressly admitted by the defendant must be  
4 proved by properly authenticated copies of court records served on the  
5 defendant or his counsel not later than 10 days before the day set for  
6 imposition of sentence.

7           (b) If the defendant denies the authenticity of any prior judg-  
8 ment of conviction, or that he is the same person named in the judg-  
9 ment, or that the elements of a prior offense committed in another  
10 jurisdiction are substantially identical to those of first degree  
11 murder or to any Class A felony included in sec. 35(a)(1) of this  
12 chapter, or that a prior conviction occurred within the period speci-  
13 fied in sec. 35(b)(1) of this chapter, or if he alleges that two or  
14 more purportedly separate prior convictions should be considered a  
15 single conviction under sec. 35(b)(3) of this chapter, the defendant  
16 shall file with the court and serve on the state notice of denial not  
17 later than five days before the date set for imposition of sentence.  
18 The notice of denial must include a clear and concise statement of the  
19 grounds relied upon and may be supported by affidavit or other docu-  
20 mentary evidence.

21           (c) Matters alleged in the notice of denial must be heard by the  
22 court sitting without a jury. If the defendant introduces substantial  
23 evidence that he is not the same person named in a prior judgment of  
24 conviction, or if he introduces substantial evidence that it is a  
25 forgery or that it did not occur within the period specified in sec.  
26 35(b)(1) of this chapter, the burden of proving the contrary is upon  
27 the state beyond a reasonable doubt. Additional issues must be decided  
28 by the court as matters of law.

29           (d) The duly authenticated judgments of courts of record of the

1 United States, the District of Columbia, or of any state, territory or  
2 political subdivision of the United States are prima facie proof of  
3 conviction.

4 Sec. 12.55.042. FACTORS IN AGGRAVATION AND MITIGATION. (a) If  
5 sentence is imposed under sec. 35(a) of this chapter, the court may  
6 increase the presumptive sentence by not more than 50 per cent of the  
7 applicable term for factors in aggravation, or decrease the presump-  
8 tive sentence by not more than 50 per cent of the applicable term for  
9 factors in mitigation. Sentence increments and decrements under this  
10 section must be based on the totality of the aggravating and mitigat-  
11 ing factors set out in (b) and (c) of this section, having due regard  
12 for the overall weight and relevance of those factors viewed in  
13 conjunction with the other circumstances of the offense.

14 (b) The following factors must be considered by the sentencing  
15 court and may aggravate the applicable presumptive term set out in  
16 sec. 35(a) of this chapter;

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

19 (2) the defendant's acts during the commission of the  
20 offense manifested deliberate cruelty to another person;

21 (3) the defendant employed a firearm or other dangerous  
22 weapon in furtherance of the offense;

23 (4) the defendant was the leader of a group of three or  
24 more persons who participated in the offense;

25 (5) the defendant knew or reasonably should have known that  
26 the victim or victims of the offense were particularly vulnerable or  
27 incapable of resistance due to advanced age, disability, ill health,  
28 or extreme youth, or were for any other reason substantially incapable  
29 of exercising normal physical or mental powers of resistance;

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

3 (7) the defendant has a criminal history consisting of one  
4 or more prior felony convictions other than Class A, or one or more  
5 convictions for misdemeanors having assault as a necessary element.

6 (c) The following factors must be considered by the sentencing  
7 court and may mitigate the presumptive terms set out in sec. 35(a) of  
8 this chapter:

9 (1) the offense was principally accomplished by another  
10 person and the defendant manifested extreme caution or sincere concern  
11 for the safety or well being of the victim or victims;

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

14 (3) the defendant committed the offense under some degree  
15 of duress, coercion, threat, or compulsion insufficient to constitute  
16 a complete defense, but which significantly affected his conduct;

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

19 (5) the conduct of an aged defendant was substantially a  
20 product of physical or mental infirmities resulting from his age;

21 (6) in a conviction for assault with a dangerous weapon  
22 under AS 11.15.220, the defendant acted under serious provocation from  
23 the victim or victims; or

24 (7) the victim or victims provoked the crime to a signifi-  
25 cant degree.

26 (d) When a factor in aggravation is a necessary element of the  
27 offense or a factor in mitigation is raised at trial as a defense  
28 reducing the offense charged to a lesser included offense, that factor  
29 may not be used to enhance or lessen the presumptive term.

1 (e) When the state seeks to establish any factor in aggravation  
2 at sentencing, or when the defendant seeks to establish any factor in  
3 mitigation at sentencing, written notice must be served on the opposing  
4 party and filed with the court not later than 10 days before the date  
5 set for imposition of sentence. Factors in aggravation and factors in  
6 mitigation must be established by clear and convincing evidence before  
7 the court sitting without a jury. All findings must be set out with  
8 specificity.

9 (f) For purposes of this section,

10 (1) "serious provocation" means conduct sufficient to excite  
11 an intense passion in a reasonable person in the defendant's position,  
12 but does not include mere insulting words or gestures or mere hearsay  
13 reports of provocative conduct by the victim or intended victim;

14 (2) no prior convictions will be considered when a period  
15 of seven or more years, excluding any periods of incarceration, has  
16 elapsed between the date of conviction for the immediately preceding  
17 offense and the date of the commission of the present offense.

18 Sec. 12.55.043. EXTRAORDINARY CIRCUMSTANCES. (a) If the  
19 defendant is subject to sentencing under sec. 35(a)(1) of this chapter,  
20 and the court finds clear and convincing evidence to justify con-  
21 sideration of relevant mitigating or aggravating factors not specifi-  
22 cally included in sec. 42 of this chapter, or application of the  
23 presumptive term, whether or not adjusted for aggravating or mitigating  
24 factors, would result in manifest injustice to the defendant or to the  
25 public, the court may sentence the defendant to any term provided by  
26 law consistent with the purposes of sentencing stated in sec. 5 of  
27 this chapter. The court shall set out its findings and reasons with  
28 specificity.

29 (b) If the defendant is subject to sentencing under sec. 35(a)(2)

1 or (3) of this chapter and the court finds clear and convincing evidence  
2 to justify consideration of relevant mitigating or aggravating factors  
3 not specifically included in sec. 42 of this chapter, or application  
4 of the presumptive term, whether or not adjusted for aggravating or  
5 mitigating factors, would result in manifest injustice to the defendant  
6 or the public, the court shall enter findings and cause a record of  
7 the proceedings to be transmitted to a three-judge panel for sentencing  
8 under sec. 44 of this chapter.

9 (c) In no event may punishment be mitigated or reduced because  
10 of voluntary alcohol or other drug intoxication or chronic alcoholism  
11 or other drug addiction.

12 Sec. 12.55.044. THREE-JUDGE SENTENCING PANEL. (a) There is  
13 created within the superior court a panel of five superior court  
14 judges to be appointed by the chief justice in accordance with rules  
15 and for terms as may be prescribed by the supreme court. Three members  
16 of the panel shall be designated as members. The remaining two  
17 superior court judges shall be designated as first and second alter-  
18 nates to sit as members in the event of disqualification or disability  
19 in accordance with rules as may be prescribed by the supreme court.

20 (b) The three-judge panel shall sentence a defendant when a  
21 sentencing court finds under sec. 43(b) of this chapter that a manifest  
22 injustice would result from the imposition of the presumptive term,  
23 whether or not adjusted for any aggravating or mitigating factors  
24 under sec. 42 of this chapter.

25 (c) Sentencing shall be imposed only by a majority of the three-  
26 judge panel after consideration of all pertinent files, records and  
27 transcripts, including the findings and conclusions of the judge who  
28 originally heard the matter. The three-judge panel may hear oral  
29 testimony to supplement the record before it.

1 (d) The three-judge panel may in the interest of justice sentence  
2 the defendant under any law applicable to the offense in question,  
3 notwithstanding the presumptive term provided in this chapter.

4 \* Sec 3. AS 33.15.180 is amended to read:

5 Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state  
6 prisoner other than a juvenile delinquent, wherever confined and  
7 serving a definite term of over 180 days or a term the minimum of  
8 which is at least 181 days, and who is not imprisoned in accordance  
9 with AS 12.55.035(a), 12.55.043, and 12.55.044, as applicable, whose  
10 record shows that he has observed the rules of the institution in  
11 which he is confined, may, in the discretion of the board, be released  
12 on parole, subject to the limitation prescribed in secs. 80 and 230(a)-  
13 (1) of this chapter.

14 (b) A state prisoner imprisoned in accordance with AS 12.55.035(a)  
15 12.55.043, and 12.55.044, as applicable, who is released under AS 33.-  
16 20.030 shall be placed on parole for the period specified in the  
17 certificate of deduction subject to written rules and conditions  
18 imposed by the board or his parole officer.

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

20 Sec. 33.20.010. COMPUTATION OF GOOD TIME. (a) Each prisoner  
21 convicted of an offense against the state and sentenced to imprison-  
22 ment in a correctional institution, whose record of conduct shows that  
23 he has faithfully observed the rules of that institution is entitled  
24 to a deduction from the term of imprisonment of one day for every two  
25 days of good conduct served.

26 (b) Not more than 30 days of good time earned under (a) of this  
27 section is subject to forfeiture for any one subsequent infraction,  
28 but future good time may also be denied.

29 (c) The commissioner of health and social services shall adopt

1 reasonable and equitable regulations specifying infractions which may  
2 result in forfeiture of earned good time or denial of future good time  
3 and the amount of good time which may be forfeited or denied as a  
4 result of each such infraction.

5 \* Sec. 5. AS 11.30.095(g), 11.30.095(i), 12.55.040, 12.55.050, 12.55.-  
6 060, 12.55.070, 33.20.020, 33.20.040, and 33.20.050 are repealed.

7 \* Sec. 6. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of  
8 this Act, applies upon conviction only to Class A felonies committed after  
9 the effective date of this Act. The court shall consider prior convictions  
10 whether committed before or after the effective date of this Act.

11 (b) AS 33.15.180, as amended in sec. 3 of this Act, applies to persons  
12 imprisoned for offenses committed after the effective date of this act.

13 (c) AS 33.20.010, as re-enacted in sec. 4 of this Act, applies to all  
14 persons imprisoned in state correctional institutions as of the effective  
15 date of this Act, but is not retroactive in application.

16 \* Sec. 7. EXISTING REHABILITATIVE PROGRAMS. The Division of Correc-  
17 tions shall examine existing rehabilitative programs and the alternatives  
18 to them to determine their applicability to prisoners sentenced under this  
19 Act.

20 \* Sec. 8. STUDY OF CLASS B AND CLASS C FELONY SENTENCES AND MISDEMEANOR  
21 SENTENCES. (a) The Criminal Law Revision Subcommittee of the Code Revision  
22 Commission, in conjunction with the Alaska Judicial Council, shall study  
23 and report to the legislature their recommendations regarding presumptive  
24 sentencing for Class B and Class C felonies. In addition, the subcommission  
25 and the Judicial Council shall study and report to the legislature the  
26 advisability and effect of adopting a system of presumptive sentencing for  
27 misdemeanors. In undertaking these studies, the subcommission and the  
28 Judicial Council should recognize that a presumptive term for Class B and  
29 Class C felonies and for misdemeanors does not necessarily entail mandatory

1 confinement.

2 (b) The Alaska Judicial Council shall monitor existing sentencing  
3 practices and legislative enactments affecting sentencing and report  
4 periodically to the legislature and the supreme court.  
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