

Original sponsor: Rules/Governor

Offered: 4/19/82
Referred: Finance

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 535 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the criminal laws of the state; and
7 changing Rule 35(a), (b), and (k), Rules of Criminal
8 Procedure."

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

10 * Section 1. AS 11.41.100 is amended by adding a new subsection to read:

11 (c) If more than one person dies as a result of a person committing
12 murder in the first degree, each death constitutes a separately punish-
13 able offense.

14 * Sec. 2. AS 11 41.110 is amended by adding a new subsection to read:

15 (c) If more than one person dies as a result of a person commit-
16 ting murder in the second degree, each death constitutes a separately
17 punishable offense.

18 * Sec. 3. AS 11.41.120 is amended by adding a new subsection to read:

19 (c) If more than one person dies as a result of a person com-
20 mitting manslaughter, each death constitutes a separately punishable
21 offense.

22 * Sec. 4. AS 11.41.130 is amended by adding a new subsection to read:

23 (c) If more than one person dies as a result of a person com-
24 mitting criminally negligent homicide, each death constitutes a separ-
25 ately punishable offense.

26 * Sec. 5. AS 11.46.484(b) is amended to read:

27 (b) Except as provided in (c) of this section, criminal [CRIMINAL]
28 mischief in the third degree is a class A misdemeanor.

29 * Sec. 6. AS 11.46.484 is amended by adding a new subsection to read:

1 (c) A person convicted under (a)(2) of this section who has been
2 previously convicted under that paragraph or under AS 28.35.010 is
3 guilty of a class C felony.

4 * Sec. 7. AS 11.81.320 is amended by adding a new subsection to read:

5 (b) The justification allowed in (a) of this section is an affirma-
6 tive defense.

7 * Sec. 8. AS 11.81 is amended by adding a new section to read:

8 Sec. 11.81.650. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

9 (a) In a prosecution for a crime it is an affirmative defense that when
10 the defendant engaged in the criminal conduct he lacked substantial
11 capacity, as a result of a mental disease or defect, either to appre-
12 ciate the wrongfulness of his conduct or to conform his conduct to the
13 requirements of law.

14 (b) Evidence of a mental disease or defect that is manifested only
15 by repeated criminal or other antisocial conduct is not sufficient to
16 establish an affirmative defense under (a) of this section.

17 * Sec. 9. AS 11.81.900(a)(1) is amended to read:

18 (1) a person acts "intentionally" with respect to a result
19 described by a provision of law defining an offense when his conscious
20 objective is to cause that result; when intentionally causing a particu-
21 lar result is an element of an offense, that intent need not be the
22 person's only objective;

23 * Sec. 10. AS 11.81.900(b)(37) is amended to read:

24 (37) "organization" means a legal entity, including a corpora-
25 tion, company, association, firm, partnership, joint stock company,
26 foundation, institution, government, society, union, club, church, or
27 any other group of persons organized for any purpose;

28 * Sec. 11. AS 11.81.900(b)(44) is amended to read:

29 (44) "property" means a domestic pet or livestock regardless

1 of value, an article, substance, or thing of value, including money,
2 tangible and intangible personal property including data or informa-
3 tion stored in a computer program, system, or network, real property, a
4 credit card, choses-in-action, and evidence of debt or of contract; [,]
5 a commodity of a public utility such as gas, electricity, steam, or
6 water constitutes property but the supplying of such a commodity to
7 premises from an outside source by means of wires, pipes, conduits, or
8 other equipment is considered a rendition of a service rather than a
9 sale or delivery of property;

10 * Sec. 12. AS 11.81.900(b)(49) is amended to read:

11 (49) "serious physical injury" means

12 (A) physical injury caused by an act performed under
13 circumstances that create [WHICH CREATES] a substantial risk of
14 death; or

15 (B) physical injury that [WHICH] causes serious and
16 protracted disfigurement, protracted impairment of health, [OR]
17 protracted loss or impairment of the function of a body member or
18 organ, or that [PHYSICAL INJURY WHICH] unlawfully terminates a
19 pregnancy;

20 * Sec. 13. AS 12.55.025 is amended by adding new subsections to read:

21 (g) Except as provided in (h) of this section, if the defendant
22 has been convicted of a crime other than the one for which he is pre-
23 sently being sentenced, the sentences of imprisonment for the two con-
24 victions shall be served consecutively, regardless of whether either
25 judgment specifies that the sentences shall be consecutive.

26 (h) The court may specify that sentences of imprisonment for
27 multiple crimes charged in a single charging document are to be served
28 concurrently if the court finds that the crimes violate similar societal
29 interests or are part of a single continuous criminal episode, unless

1 (1) there was a substantial change in the nature of the
2 criminal objective, including but not limited to a change in the parties
3 to the crimes, the property or type of property right offended, or the
4 persons offended;

5 (2) the crimes were committed while the defendant attempted
6 to escape or avoid detection or apprehension after the commission of
7 another crime;

8 (3) the sentence is for violation of AS 11.41.100 - 11.41.-
9 140, AS 11.41.200 - 11.41.250, AS 11.41.300 - 11.41.350, or for a viola-
10 tion of AS 11.41.500 - 11.41.530 that results in physical injury or
11 serious physical injury as those terms are defined in AS 11.41.900 to
12 one or more persons; or

13 (4) the sentence is for violation of AS 11.41.410 - 11.41.-
14 455.

15 * Sec. 14. AS 12.55.088(a) is amended to read:

16 (a) The court may modify or reduce a sentence by entering a written
17 order within 60 days of the original sentencing [AT ANY TIME DURING A
18 TERM OF IMPRISONMENT IF IT FINDS THAT CONDITIONS OR CIRCUMSTANCES HAVE
19 CHANGED SINCE THE ORIGINAL SENTENCING HEARING SUCH THAT THE PURPOSE OF
20 THE ORIGINAL SENTENCE IS NOT BEING FULFILLED].

21 * Sec. 15. AS 12.55.125(c)(1) is amended to read:

22 (1) if the offense is a first felony conviction [, OTHER THAN
23 FOR MANSLAUGHTER,] and, during the commission of the offense, the defen-
24 dant possessed or used a firearm or used a dangerous instrument or
25 caused serious physical injury, eight [DURING THE COMMISSION OF THE
26 OFFENSE, SIX] years;

27 * Sec. 16. AS 12.55.135(c) is amended to read:

28 (c) A defendant convicted of assault in the fourth [THIRD]
29 degree committed in violation of the provisions of an order issued under

1 AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of impris-
2 sonment of 20 [10] days. The execution of sentence may not be suspended
3 and probation or parole may not be granted until the minimum term of
4 imprisonment has been served. Imposition of sentence may not be sus-
5 pended, except upon condition that the defendant be [BY] imprisoned for
6 no less than the minimum term of imprisonment provided in this section,
7 and the minimum sentence provided for in this section may not be other-
8 wise reduced.

9 * Sec. 17. AS 12.55.145(a) is repealed and reenacted to read:

10 (a) For purposes of considering prior convictions in imposing
11 sentence under this chapter

12 (1) a prior conviction may not be considered if a period of
13 10 or more years has elapsed between the date of the defendant's uncon-
14 ditional discharge on the immediately preceding offense and commission
15 of the present offense unless the prior conviction was for an unclassi-
16 fied or class A felony;

17 (2) a conviction in this or another jurisdiction of an offense
18 having elements similar to those of a felony defined as such under
19 Alaska law is considered a prior felony conviction;

20 (3) two or more convictions for crimes violating similar
21 societal interests or arising out of a single, continuous criminal
22 episode are considered a single conviction unless

23 (A) there was a substantial change in the nature of the
24 criminal objective, including but not limited to a change in the
25 parties to the crimes, the property or type of property right
26 offended, or the persons offended;

27 (B) the crimes were committed while the defendant
28 attempted to escape or avoid detection or apprehension after the
29 commission of another crime;

1 (C) the sentence is for violation of AS 11.41.100 -
2 11.41.140, AS 11.41.200 - 11.41.250, AS 11.41.300 - 11.41.330, or
3 for a violation of AS 11.41.500 - 11.41.530 that results in physical
4 injury or serious physical injury as those terms are defined in
5 AS 11.41.900 to one or more persons; or

6 (D) the sentence is for violation of AS 11.41.410 -
7 11.41.455.

8 * Sec. 18. AS 12.55.145(b) is amended to read:

9 (b) When sentence is imposed under this chapter, prior convictions
10 not expressly admitted by the defendant must be proved by authenticated
11 copies of court records served on the defendant or his counsel at least
12 20 [10] days before the date set for imposition of sentence.

13 * Sec. 19. AS 12.55.145(c) is amended to read:

14 (c) If the defendant denies the authenticity of a prior judgment
15 of conviction, that he is the person named in the judgment, that the
16 elements of a prior offense committed in another jurisdiction are sub-
17 stantially identical to those of a felony defined as such under Alaska
18 law, or that a prior conviction occurred within the period specified in
19 (a)(1) of this section or if he alleges that two or more purportedly
20 separate prior convictions should be considered a single conviction
21 under (a)(3) of this section, the defendant shall file with the court
22 and serve on the prosecuting attorney notice of denial no later than 10
23 [FIVE] days before the date set for imposition of sentence. The notice
24 of denial shall include a concise statement of the grounds relied upon
25 and may be supported by affidavit or other documentary evidence.

26 * Sec. 20. AS 12.55.145 is amended by adding a new subsection to read:

27 (f) When a defendant is convicted of a felony by a court of this
28 state he shall place his fingerprints on the judgment of conviction in
29 open court, on the record, at the time of sentencing. The defendant and

1 the person administering the fingerprinting shall sign their names under
2 the fingerprints.

3 * Sec. 21. AS 12.55.155(c)(8) is repealed and reenacted to read:

4 (8) the defendant's prior criminal history includes conduct
5 involving aggravated or repeated instances of assaultive behavior;

6 * Sec. 22. AS 12.55.155(c) is amended by adding new paragraphs to read:

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

10 (20) the defendant was on furlough under AS 33.30 or on parole
11 or probation for another felony charge or conviction;

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

16 * Sec. 23. AS 12.45.083; AS 12.55.025(e), 12.55.155(d)(8); AS 47.25.280,
17 47.25.403, 47.25.405, 47.25.600, 47.25.760, 47.25.950, 47.25.983, and 47.25.-
18 985(a)(3) are repealed.

19 * Sec. 24. AS 12.55.088(a), amended by sec. 14 of this Act, has the
20 effect of changing Rule 35(a), (b), and (k), Rules of Criminal Procedure, by
21 deleting the provisions for modification or reduction of sentence as a result
22 of changed circumstances and by decreasing from 120 to 60 days the period of
23 time in which a sentence otherwise may be modified or reduced.