

Introduced: 2/13/85
Referred: Judiciary and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 194

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sentencing for certain offenses
7 involving discriminatory harassment."

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

9 * Section 1. AS 09.55 is amended by adding a new section to read:

10 ARTICLE 8. DISCRIMINATORY HARASSMENT.

11 Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A person
12 may maintain an action for discriminatory harassment against another
13 person, or against the parent or legal guardian of a minor, who has
14 caused physical injury to the person or damage to the property of the
15 person, with the intent to intimidate or harass the person because of
16 the person's sex, race, color, religion, national origin, or physical
17 handicap.

18 (b) Actual and punitive damages may be awarded to a prevailing
19 plaintiff in an action brought under this section. An award of dam-
20 ages against the parent or legal guardian of a minor under this sec-
21 tion must be predicated upon conduct of the parent or legal guardian
22 that is at least negligent. An award of damages under this section
23 does not preclude a person from seeking other remedies available under
24 law.

25 (c) An informational copy of a complaint filed under this sec-
26 tion, and of the answer to it, must be served on the executive direc-
27 tor of the Alaska State Commission for Human Rights.

28 * Sec. 2. AS 12.55.125(c) is amended to read:

29 (c) A defendant convicted of a class A felony may be sentenced

1 to a definite term of imprisonment of not more than 20 years, and must
2 [SHALL] be sentenced to the following presumptive terms, subject to
3 adjustment as provided in AS 12.55.155 -- 12.55.175:

4 (1) if the offense is a first felony conviction and does
5 not involve circumstances described in (2) of this subsection, five
6 years;

7 (2) if the offense is a first felony conviction, other than
8 for manslaughter, and

9 (A) the defendant possessed a firearm, used a danger-
10 ous instrument, or caused serious physical injury during the
11 commission of the offense, seven years; [OR]

12 (B) the defendant knowingly directed the conduct
13 constituting the offense at a uniformed or otherwise clearly
14 identified peace officer, fire fighter, correctional officer,
15 emergency medical technician, paramedic, ambulance attendant, or
16 other emergency responder who was engaged in the performance of
17 official duties at the time of the offense, seven years; or

18 (C) the defendant committed the offense with the
19 intent to intimidate or harass another person because of the
20 person's race, color, religion, national origin, or physical
21 handicap, seven years;

22 (3) if the offense is a second felony conviction, 10 years;

23 (4) if the offense is a third felony conviction, 15 years.

24 * Sec. 3. AS 12.55.125(d) is amended to read:

25 (d) A defendant convicted of a class B felony may be sentenced
26 to a definite term of imprisonment of not more than 10 years, and must
27 [SHALL] be sentenced to the following presumptive terms, subject to
28 adjustment as provided in AS 12.55.155 -- 12.55.175:

29 (1) if the offense is a second felony conviction, four

1 years;

2 (2) if the offense is a third felony conviction, six years;

3 (3) if the offense is a first felony conviction, and the
4 defendant knowingly directed the conduct constituting the offense at a
5 uniformed or otherwise clearly identified peace officer, fire fighter,
6 correctional officer, emergency medical technician, paramedic, ambu-
7 lance attendant, or other emergency responder who was engaged in the
8 performance of official duties at the time of the offense, two years;

9 (4) if the offense is a first felony conviction, and the
10 defendant committed the offense with the intent to intimidate or
11 harass another person because of the person's race, color, religion,
12 national origin, or physical handicap, two years.

13 * Sec. 4. AS 12.55.125(e) is amended to read:

14 (e) A defendant convicted of a class C felony may be sentenced
15 to a definite term of imprisonment of not more than five years, and
16 must [SHALL] be sentenced to the following presumptive terms, subject
17 to adjustment as provided in AS 12.55.155 -- 12.55.175:

18 (1) if the offense is a second felony conviction, two
19 years;

20 (2) if the offense is a third felony conviction, three
21 years;

22 (3) if the offense is a first felony conviction, and the
23 defendant knowingly directed the conduct constituting the offense at a
24 uniformed or otherwise clearly identified peace officer, fire fighter,
25 correctional officer, emergency medical technician, paramedic, ambu-
26 lance attendant, or other emergency responder who was engaged in the
27 performance of official duties at the time of the offense, one year;

28 (4) if the offense is a first felony conviction, and the
29 defendant committed the offense with the intent to intimidate or

1 harass another person because of the person's race, color, religion,
2 national origin, or physical handicap, one year.

3 * Sec. 5. AS 12.55.125(g) is amended to read:

4 (g) If a defendant is sentenced to a presumptive term under
5 [(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i) OF] this section, except
6 to the extent permitted under AS 12.55.155 -- 12.55.175,

7 (1) imprisonment may not be suspended under AS 12.55.080;

8 (2) imposition of sentence may not be suspended under
9 AS 12.55.085;

10 (3) terms of imprisonment may not be otherwise reduced.

11 * Sec. 6. AS 12.55.135(e) is amended to read:

12 (e) A defendant convicted of a class A misdemeanor who committed
13 the offense with the intent to intimidate or harass another person
14 because of the person's race, color, religion, national origin, or
15 physical handicap must be sentenced to a minimum term of imprisonment
16 of 30 days [THE EXECUTION OF A SENTENCE UNDER (c) OR (d) OF THIS
17 SECTION MAY NOT BE SUSPENDED AND PROBATION OR PAROLE MAY NOT BE GRAN-
18 TED UNTIL THE MINIMUM TERM OF IMPRISONMENT HAS BEEN SERVED. IMPOSI-
19 TION OF A SENTENCE UNDER (c) OR (d) OF THIS SECTION MAY NOT BE SUS-
20 PENDED, EXCEPT UPON CONDITION THAT THE DEFENDANT BE IMPRISONED FOR NO
21 LESS THAN THE MINIMUM TERM OF IMPRISONMENT PROVIDED IN (c) OR (d) OF
22 THIS SECTION AND THE MINIMUM SENTENCE PROVIDED FOR IN (c) OR (d) OF
23 THIS SECTION MAY NOT BE OTHERWISE REDUCED].

24 * Sec. 7. AS 12.55.135 is amended by adding new subsections to read:

25 (f) A defendant convicted of a class B misdemeanor who committed
26 the offense with the intent to intimidate or harass another person
27 because of the person's race, color, religion, national origin, or
28 physical handicap must be sentenced to a minimum term of imprisonment
29 of 10 days.

1 (g) If a defendant is sentenced to a minimum term under this
2 section,

3 (1) imprisonment may not be suspended and probation or
4 parole may not be granted until the minimum term of imprisonment has
5 been served;

6 (2) imposition of sentence may not be suspended under
7 AS 12.55.085, except on condition that the defendant be imprisoned for
8 no less than the minimum term of imprisonment provided under this
9 section;

10 (3) terms of imprisonment may not be otherwise reduced
11 until the minimum term of imprisonment has been served.

12 * Sec. 8. Sec. 12.55.145(a) is amended to read:

13 (a) For purposes of considering prior convictions in imposing
14 sentence under AS 12.55.125[(c), (d)(1), (d)(2), (e)(1), (e)(2), OR
15 (i)]

16 (1) a prior conviction may not be considered if a period of
17 10 or more years has elapsed between the date of the defendant's
18 unconditional discharge on the immediately preceding offense and
19 commission of the present offense unless the prior conviction was for
20 an unclassified or class A felony;

21 (2) a conviction in this or another jurisdiction of an
22 offense having elements similar to those of a felony defined as such
23 under Alaska law at the time the offense was committed is considered a
24 prior felony conviction;

25 (3) two or more convictions arising out of a single, con-
26 tinuous criminal episode during which there was no substantial change
27 in the nature of the criminal objective are considered a single con-
28 viction unless the defendant was sentenced to consecutive sentences
29 for the crimes; offenses committed while attempting to escape or avoid

1 detection or apprehension after the commission of another offense are
2 not part of the same criminal episode or objective.

3 * Sec. 9. AS 12.55.155(a) is amended to read:

4 (a) If a defendant is convicted of an offense and is subject to
5 a presumptive term [SENTENCING] under AS 12.55.125[(c), (d)(1),
6 (d)(2), (e)(1), (e)(2), OR (i)] and

7 (1) the presumptive term is four years or less, the court
8 may decrease the presumptive term by an amount as great as the pre-
9 sumptive term for factors in mitigation or may increase the presump-
10 tive term up to the maximum term of imprisonment for factors in aggra-
11 vation;

12 (2) the presumptive term of imprisonment is more than four
13 years, the court may decrease the presumptive term by an amount as
14 great as 50 percent of the presumptive term for factors in mitigation
15 or may increase the presumptive term up to the maximum term of impris-
16 onment for factors in aggravation.

17 * Sec. 10. AS 12.55.155(c) is amended to read:

18 (c) The following factors must [SHALL] be considered by the
19 sentencing court and may aggravate the presumptive terms set out in
20 AS 12.55.125:

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

23 (2) the defendant's conduct during the commission of the
24 offense manifested deliberate cruelty to another person;

25 (3) the defendant was the leader of a group of three or
26 more persons who participated in the offense;

27 (4) the defendant employed a dangerous instrument in fur-
28 therance of the offense;

29 (5) the defendant knew or reasonably should have known that

1 the victim of the offense was particularly vulnerable or incapable of
2 resistance due to advanced age, disability, ill health, or extreme
3 youth or was for any other reason substantially incapable of exercis-
4 ing normal physical or mental powers of resistance;

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

7 (7) a prior felony conviction considered for the purpose of
8 invoking the presumptive terms of this chapter was of a more serious
9 class of offense than the present offense;

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

12 (9) the defendant knew that the offense involved more than
13 one victim;

14 (10) the conduct constituting the offense was among the most
15 serious conduct included in the definition of the offense;

16 (11) the defendant committed the offense under [PURSUANT TO]
17 an agreement that the defendant either pay or be paid for the commis-
18 sion of the offense, and the pecuniary incentive was beyond that
19 inherent in the offense itself;

20 (12) the defendant was on release under AS 12.30.020 or
21 12.30.040 for another felony charge or conviction or for a misdemeanor
22 charge or conviction having assault as a necessary element;

23 (13) the defendant knowingly directed the conduct constitut-
24 ing the offense at an active officer of the court or at an active or
25 former judicial officer, prosecuting attorney, law enforcement offi-
26 cer, correctional employee, fire fighter, emergency medical techni-
27 cian, paramedic, ambulance attendant, or other emergency responder
28 during or because of the exercise of official duties;

29 (14) the defendant was a member of an organized group of

1 five or more persons, and the offense was committed to further the
2 criminal objectives of the group;

3 (15) the defendant has three or more prior felony convictions;
4

5 (16) the defendant's criminal conduct was designed to obtain
6 substantial pecuniary gain and the risk of prosecution and punishment
7 for the conduct is slight;

8 (17) the offense was one of a continuing series of criminal
9 offenses committed in furtherance of illegal business activities from
10 which the defendant derives a major portion of the defendant's income;

11 (18) the offense was a crime specified in AS 11.41 and was
12 committed against a spouse, a former spouse, or a member of the social
13 unit comprised of those living together in the same dwelling as the
14 defendant;

15 (19) the defendant's prior criminal history includes an
16 adjudication as a delinquent for conduct that would have been a felony
17 if committed by an adult;

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

20 (21) the defendant has a criminal history of repeated in-
21 stances of conduct violative of criminal laws, whether punishable as
22 felonies or misdemeanors, similar in nature to the offense for which
23 the defendant is being sentenced under this section;

24 (22) the defendant knowingly directed the conduct constitut-
25 ing the offense at a victim because of that person's race, sex, color,
26 creed, ancestry, religion, or national origin;

27 (23) the defendant is convicted of an offense specified in
28 AS 11.71 and the offense involved the delivery of a controlled sub-
29 stanced under circumstances manifesting an intent to distribute the

1 substance as part of a commercial enterprise;

2 (24) the defendant is convicted of an offense specified in
3 AS 11.71 and the offense involved the transportation of controlled
4 substances into the state;

5 (25) the defendant is convicted of an offense specified in
6 AS 11.71 and the offense involved large quantities of a controlled
7 substance;

8 (26) the defendant is convicted of an offense specified in
9 AS 11.71 and the offense involved the distribution of a controlled
10 substance that had been adulterated with a toxic substance.

11 * Sec. 11. AS 12.55.155(e) is amended to read:

12 (e) If a factor in aggravation is a necessary element of the
13 present offense, or requires the imposition of a presumptive term
14 under AS 12.55.125(c)(2), (d)(3) or (4), or (e)(3) or (4), that factor
15 may not be used to aggravate the presumptive term. If a factor in
16 mitigation is raised at trial as a defense reducing the offense
17 charged to a lesser included offense, that factor may not be used to
18 mitigate the presumptive term.

19 * Sec. 12. AS 12.55 is amended by adding a new section to read:

20 Sec. 12.55.160. RECORDS OF DISCRIMINATORY CONDUCT. The adminis-
21 trative director of the Alaska Court System shall prepare an annual
22 report to the Alaska Human Rights Commission concerning cases involv-
23 ing civil suits brought under AS 09.55.650, cases involving sentences
24 imposed under AS 12.55.125(c)(2)(C), (d)(4), (e)(4), and AS 12.55.-
25 145(f) and (g) and cases in which a court has found the existence of
26 the aggravating factor in AS 12.55.155(c)(22). The report shall
27 include the number of cases, the types of civil action brought and
28 amount of damages awarded, the types of crimes involved and sentences
29 imposed, and the geographical distribution of the cases.

1 * Sec. 13. AS 12.55.165 is amended to read:

2 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant
3 is subject to a presumptive term [SENTENCING] under AS 12.55.125[(c),
4 (d)(1), (d)(2), (e)(1), (e)(2), OR (1)] and the court finds by clear
5 and convincing evidence that manifest injustice would result from
6 failure to consider relevant aggravating or mitigating factors not
7 specifically included in AS 12.55.155 or from imposition of the pre-
8 sumptive term, whether or not adjusted for aggravating or mitigating
9 factors, the court shall enter findings and conclusions and cause a
10 record of the proceedings to be transmitted to a three-judge panel for
11 sentencing under AS 12.55.175.