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Referred: Judiciary
and Finance

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GOLL, HERRMANM, KOPONEN,
M.M. MILLER, SUND, TAYLOR
AND WALLIS

1 IN THE HOUSE

2

HOUSE BILL NO. 554

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND 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 12.55.125(c) is amended to read:

9

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

13

(1) [IF THE OFFENSE IS A FIRST FELONY CONVICTION AND DOES NOT INVOLVE CIRCUMSTANCES DESCRIBED IN (2) OF THIS SUBSECTION, FIVE YEARS;

16

(2) IF THE OFFENSE IS A FIRST FELONY CONVICTION, OTHER THAN FOR MANSLAUGHTER, AND THE DEFENDANT POSSESSED A FIREARM, USED A DANGEROUS INSTRUMENT, OR CAUSED SERIOUS PHYSICAL INJURY DURING THE COMMISSION OF THE OFFENSE, OR KNOWINGLY DIRECTED THE CONDUCT CONSTITUTING THE OFFENSE AT A UNIFORMED OR OTHERWISE CLEARLY IDENTIFIED PEACE OFFICER, FIRE FIGHTER, CORRECTIONAL OFFICER, EMERGENCY MEDICAL TECHNICIAN, PARAMEDIC, AMBULANCE ATTENDANT, OR OTHER EMERGENCY RESPONDER WHO WAS ENGAGED IN THE PERFORMANCE OF OFFICIAL DUTIES AT THE TIME OF THE OFFENSE, SEVEN YEARS;

25

(3)] if the offense is a second felony conviction, nine [10] years;

27

(2) [(4)] if the offense is a third felony conviction, (14) [15] years.

29

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

1 (d) A defendant convicted of a class B felony may be sentenced
2 to a definite term of imprisonment of not more than 10 years, and
3 shall be sentenced to the following presumptive terms, subject to
4 adjustment as provided in AS 12.55.155 - 12.55.175:

5 (1) if the offense is a second felony conviction, three
6 [FOUR] years;

7 (2) if the offense is a third felony conviction, five [SIX]
8 years [;

9 (3) _IF THE OFFENSE IS A FIRST FELONY CONVICTION, AND THE
10 DEFENDANT KNOWINGLY DIRECTED THE CONDUCT CONSTITUTING THE OFFENSE AT A
11 UNIFORMED OR OTHERWISE CLEARLY IDENTIFIED PEACE OFFICER, FIRE FIGHTER,
12 CORRECTIONAL OFFICER, EMERGENCY MEDICAL TECHNICIAN, PARAMEDIC, AMBU-
13 LANCE ATTENDANT, OR OTHER EMERGENCY RESPONDER WHO WAS ENGAGED IN THE
14 PERFORMANCE OF OFFICIAL DUTIES AT THE TIME OF THE OFFENSE, TWO YEARS].

15 * Sec. 3. AS 12.55.125(e) is amended to read:

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

20 (1) if the offense is a second felony conviction, one year
21 [TWO YEARS];

22 (2) if the offense is a third felony conviction, two
23 [THREE] years [;

24 (3) _IF THE OFFENSE IS A FIRST FELONY CONVICTION, AND THE
25 DEFENDANT KNOWINGLY DIRECTED THE CONDUCT CONSTITUTING THE OFFENSE AT A
26 UNIFORMED OR OTHERWISE CLEARLY IDENTIFIED PEACE OFFICER, FIRE FIGHTER,
27 CORRECTIONAL OFFICER, EMERGENCY MEDICAL TECHNICIAN, PARAMEDIC, AMBU-
28 LANCE ATTENDANT, OR OTHER EMERGENCY RESPONDER WHO WAS ENGAGED IN THE
29 PERFORMANCE OF OFFICIAL DUTIES AT THE TIME OF THE OFFENSE, ONE YEAR].

1 * Sec. 4. AS 12.55.125(g) is amended to read:

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

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

6 (2) imposition of sentence may not be suspended under
7 AS 12.55.085;

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

9 * Sec. 5. AS 12.55.125(i) is amended to read:

10 (i) A defendant convicted of sexual assault in the first degree
11 or sexual abuse of a minor in the first degree may be sentenced to a
12 definite term of imprisonment of not more than 30 years, and shall be
13 sentenced to the following presumptive terms, subject to adjustment as
14 provided in AS 12.55.155 - 12.55.175:

15 (1) [IF THE OFFENSE IS A FIRST FELONY CONVICTION AND DOES
16 NOT INVOLVE CIRCUMSTANCES DESCRIBED IN (2) OF THIS SUBSECTION, EIGHT
17 YEARS;

18 (2) IF THE OFFENSE IS A FIRST FELONY CONVICTION, AND THE
19 DEFENDANT POSSESSED A FIREARM, USED A DANGEROUS INSTRUMENT, OR CAUSED
20 SERIOUS PHYSICAL INJURY DURING THE COMMISSION OF THE OFFENSE, 10
21 YEARS;

22 (3)] if the offense is a second felony conviction, 14 [15]
23 years;

24 (2) [(4)] if the offense is a third felony conviction,
25 (24) [25] years.

26 * Sec. 6. AS 12.55.155(c)(4) is amended to read:

27 (4) the defendant possessed a firearm or employed a
28 dangerous instrument in furtherance of the offense;

29 * Sec. 7. AS 12.55.155(d) is amended by adding new paragraphs to read:

- 1 (17) the defendant is under the age of 25;
- 2 (18) the defendant has demonstrated good potential for
3 rehabilitation;
- 4 (19) the defendant has no record of criminal law violations;
- 5 (20) the defendant has demonstrated sincere remorse for the
6 offense;
- 7 (21) the offense was isolated and not premeditated;
- 8 (22) the defendant's capacity to formulate the requisite
9 culpable mental state for the offense was diminished to a degree
10 insufficient to constitute a complete defense;
- 11 (23) the defendant sought counseling or other mental health
12 treatment for the conduct underlying the criminal offense before
13 discovery of the offense or apprehension of the defendant;
- 14 (24) the defendant, before apprehension, notified law en-
15 forcement authorities of the defendant's involvement in the criminal
16 conduct.

17 * Sec. 8. AS 12.55.155(e) is amended to read:

18 (e) If a factor in aggravation is a necessary element of the
19 present offense, [OR REQUIRES THE IMPOSITION OF A PRESUMPTIVE TERM
20 UNDER AS 12.55.125(c)(2), (d)(3) OR (e)(3),] that factor may not be
21 used to aggravate the presumptive term. If a factor in mitigation is
22 raised at trial as a defense reducing the offense charged to a lesser
23 included offense, that factor may not be used to mitigate the presump-
24 tive term.

25 * Sec. 9. AS 12.55.165 is amended to read:

26 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant
27 is subject to sentencing under AS 12.55.125(c)(1), (c)(2) [AS 12.55.-
28 125(c)], (d)(1), (d)(2), (e)(1), (e)(2), (i)(1), or (i)(2) [(i)] and
29 the court finds by clear and convincing evidence that the ends of

1 justice and the best interest of the public as well as the defendant
2 require consideration of [MANIFEST INJUSTICE WOULD RESULT FROM FAILURE
3 TO CONSIDER] relevant aggravating or mitigating factors not specif-
4 ically included in AS 12.55.155 or a deviation from imposition of the
5 presumptive term, whether or not adjusted for aggravating or mitigat-
6 ing factors, the court shall enter findings and conclusions and cause
7 a record of the proceedings to be transmitted to a three-judge panel
8 for sentencing under AS 12.55.175.

9 * Sec. 10. AS 12.55.175(b) is amended to read:

10 (b) Upon receipt of a record of proceedings under AS 12.55.165,
11 the three-judge panel shall consider all pertinent files, records, and
12 transcripts, including the findings and conclusions of the judge who
13 originally heard the matter. The panel may hear oral testimony to
14 supplement the record before it. If the panel finds that the ends of
15 justice and the best interest of the public as well as the defendant
16 require consideration of [MANIFEST INJUSTICE WOULD RESULT FROM FAILURE
17 TO CONSIDER] relevant aggravating or mitigating factors not specif-
18 ically included in AS 12.55.155 or a deviation from imposition of the
19 presumptive term, whether or not adjusted for aggravating or mitigat-
20 ing factors, it shall sentence the defendant in accordance with this
21 section. If the panel does not so find, [FIND THAT MANIFEST INJUSTICE
22 WOULD RESULT,] it shall remand the case to the sentencing court, with
23 a written statement of its findings and conclusions, for sentencing
24 under AS 12.55.125.

25 * Sec. 11. AS 33.15.180(a) is amended to read:

26 (a) A state prisoner other than a juvenile delinquent, wherever
27 confined and serving a definite term of over 180 days or a term the
28 minimum of which is at least 181 days, [AND WHO IS NOT IMPRISONED IN
29 ACCORDANCE WITH AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR

1 (i),] whose record shows that the prisoner has observed the rules of
2 the institution in which the prisoner is confined, may, in the dis-
3 cretion of the board, be released on parole, subject to the limitation
4 prescribed in AS 33.15.080 and 33.15.230(a)(1).