

**CS FOR HOUSE BILL NO. 555 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered: 5/10/92
Referred: Rules**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of hindering prosecution; relating to release on bail of
2 certain persons convicted of offenses who apply for post-conviction relief; relating to
3 notification in cases involving a defendant committed because of incompetency; relating to
4 suspending the imposition of sentence; relating to pronouncement of sentence following
5 revocation and termination of probation; restricting the ability of a defendant to appeal
6 a sentence on the ground that the sentence is excessive; relating to notices of denial of
7 prior convictions filed by a defendant; relating to aggravating factors; relating to execution
8 of judgment for court appointed legal representation in criminal cases; prohibiting release
9 of certain prisoners on discretionary parole until service of at least the presumptive term;
10 relating to hearsay assertions of a child victim of certain sexual offenses; amending Alaska
11 Rule of Appellate Procedure 215, Alaska Rules of Criminal Procedure 6, 11, and 35,
12 Alaska Delinquency Rule 10, and Alaska Rule of Evidence 609; and providing for an

1 effective date."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * Section 1. AS 11.56.770(a) is amended to read:

4 (a) A person commits the crime of hindering prosecution in the first degree if the person
5 renders assistance to a person who has been charged with or has committed a crime punishable
6 as a felony with intent to

7 (1) hinder the apprehension, prosecution, conviction, or punishment of that person;

8 or

9 (2) assist that person in profiting or benefiting from the commission of the crime.

10 * Sec. 2. AS 11.56.780(a) is amended to read:

11 (a) A person commits the crime of hindering prosecution in the second degree if the
12 person renders assistance to another who has been charged with or has committed a crime
13 punishable by imprisonment for more than 90 days, with intent to

14 (1) hinder the apprehension, prosecution, conviction, or punishment of the other
15 person; or

16 (2) assist the other person in profiting or benefiting from the commission of the
17 crime.

18 * Sec. 3. AS 12.30.040(b) is amended to read:

19 (b) Notwithstanding the provisions of (a) of this section, if a person has been convicted
20 of an offense that [WHICH] is an unclassified felony or a class A felony, the person may not
21 be released on bail

22 (1) [EITHER] before sentencing or pending appeal; or

23 (2) after applying for post-conviction relief, unless the court rules on the
24 merits of the application and finds that the person is entitled to post-conviction relief.

25 * Sec. 4. AS 12.47.110(b) is amended to read:

26 (b) On or before the expiration of the initial 90-day period of commitment, the court shall
27 conduct a hearing to determine whether or not the defendant remains incompetent. If the court
28 finds by a preponderance of the evidence that the defendant remains incompetent, the court may
29 recommit the defendant for a second period of 90 days. The court shall determine at the
30 expiration of the second 90-day period whether the defendant has become competent. If at the
31 expiration of the second 90-day period the court determines that the defendant continues to be

1 incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice
2 and continued commitment of the defendant shall be governed by the provisions relating to civil
3 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime
4 involving force against a person and the court finds that the defendant presents a substantial
5 danger of physical injury to other persons and that there is a substantial probability that the
6 defendant will regain competency within a reasonable period of time, in which case the court
7 may extend the period of commitment for an additional six months. If the defendant remains
8 incompetent at the expiration of the additional six-month period, the charges shall be dismissed
9 without prejudice and either civil commitment proceedings shall be instituted or the court shall
10 order the release of the defendant. If the defendant remains incompetent for five years after the
11 charges have been dismissed under this subsection, the defendant may not be charged again for
12 an offense arising out of the facts alleged in the original charges, except if the original charge
13 is a class A felony or unclassified felony. If the defendant is civilly committed under this
14 section, the victim of the crime and the prosecuting attorney's office shall be notified by the
15 commissioner of health and social services when it reasonably appears that the defendant
16 may be discharged within 30 days.

17 * Sec. 5. AS 12.55.085(a) is amended to read:

18 (a) Except as provided in (f) of this section, if it appears that there are circumstances in
19 mitigation of the punishment [,] or that the ends of justice will be served, the court may, in its
20 discretion, suspend the imposition of sentence and may direct that the suspension continue for
21 a period of time, not exceeding the maximum term of sentence that may be imposed or a period
22 of one year, whichever is greater, and upon the terms and conditions that the court determines,
23 and shall place the person on probation, under the charge and supervision of the probation officer
24 of the court during the suspension.

25 * Sec. 6. AS 12.55.085(c) is amended to read:

26 (c) Upon the revocation and termination of the probation, the court may pronounce
27 sentence at any time within the maximum probation period authorized by this section
28 [AFTER THE SUSPENSION OF THE SENTENCE WITHIN THE LONGEST PERIOD FOR
29 WHICH THE DEFENDANT MIGHT HAVE BEEN SENTENCED], subject to the limitation
30 specified in AS 12.55.086(c).

31 * Sec. 7. AS 12.55.120(a) is amended to read:

1 (a) A sentence of imprisonment lawfully imposed by the superior court for a term or for
2 aggregate terms of one year or more may be appealed to the court of appeals by the defendant
3 on the ground that the sentence is excessive, unless the sentence was imposed in accordance
4 with a plea agreement establishing either a specific or maximum sentence to be served by
5 the defendant. If a plea agreement provided for a minimum sentence, the defendant may
6 appeal only that portion of the sentence that exceeds the minimum sentence provided for
7 in the plea agreement. By appealing a sentence under this section, the defendant waives the
8 right to plead that by a revision of the sentence resulting from the appeal the defendant has been
9 twice placed in jeopardy for the same offense.

10 * Sec. 8. AS 12.55.120(d) is amended to read:

11 (d) A sentence of imprisonment lawfully imposed by the district court for a term or for
12 aggregate terms exceeding 90 days may be appealed to the superior court by the defendant on
13 the ground that the sentence is excessive, unless the sentence was imposed in accordance with
14 a plea agreement establishing either a specific or maximum sentence to be served by the
15 defendant. If a plea agreement provided for a minimum sentence, the defendant may
16 appeal only that portion of the sentence that exceeds the minimum sentence provided for
17 in the plea agreement. By appealing a sentence under this section, the defendant waives the
18 right to plead that by a revision of the sentence resulting from the appeal the defendant has been
19 twice placed in jeopardy for the same offense. A sentence of imprisonment lawfully imposed
20 by the district court may be appealed to the superior court by the state on the ground that the
21 sentence is too lenient; however, when a sentence is appealed by the state, the court may not
22 increase the sentence but may express its approval or disapproval of the sentence and its reasons
23 in a written opinion.

24 * Sec. 9. AS 12.55.145(c) is repealed and reenacted to read:

25 (c) The defendant shall file with the court and serve on the prosecuting attorney a notice
26 of denial no later than 10 days before the date set for imposition of sentence if the defendant (1)
27 denies the authenticity of a prior judgment of conviction; (2) denies that the defendant is the
28 person named in the judgment; (3) denies that a prior conviction occurred within the period
29 specified in (a)(1) of this section; (4) alleges that the elements of a prior offense committed in
30 another jurisdiction are not substantially identical to those of a felony defined as such under the
31 laws of this state; or (5) alleges that two or more purportedly separate prior convictions should

1 be considered a single conviction under (a)(3) of this section. The notice of denial must include
2 a concise statement of the grounds relied upon and, as to the denials set out in (1) - (3) of this
3 subsection, must be made under oath. The notice of denial may be supported by affidavit or
4 other documentary evidence.

5 * Sec. 10. AS 12.55.155(c)(18) is amended to read:

6 (18) the offense was a crime

7 (A) specified in AS 11.41 and was committed against a spouse, a former
8 spouse, or a member or former member of the social unit comprised of those living
9 together in the same dwelling as the defendant; or

10 (B) specified in AS 11.41.410 - 11.41.460 and was committed against a
11 minor, and the defendant has engaged in the same or similar conduct involving the same
12 or another victim who was a minor;

13 * Sec. 11. AS 18.85.120(c) is amended to read:

14 (c) Upon the person's conviction, the court may enter a judgment that a person for whom
15 counsel is appointed pay for the necessary services and facilities of representation and court costs
16 [, BUT EXECUTION OF THE JUDGMENT MAY NOT COMMENCE UNTIL THREE YEARS
17 AFTER RELEASE OF THE DEFENDANT FROM INCARCERATION UNLESS FOR GOOD
18 CAUSE SHOWN, THE COURT CONSIDERS IT APPROPRIATE TO EXECUTE EARLIER].
19 Upon a showing of financial hardship, the court shall allow a person subject to a judgment
20 entered under this subsection to make payments under a payment schedule. Payments made
21 under this subsection shall be paid into the state general fund.

22 * Sec. 12. AS 33.16.100(d) is amended to read:

23 (d) A prisoner who is sentenced for a term under AS 12.55.125(a), (b), (c), or (i) may
24 not be released on discretionary parole until the prisoner has served the mandatory minimum or
25 presumptive term under AS 12.55.125(a), (b), (c), or (i), at least one-third of the period of
26 confinement imposed, or any minimum term set under AS 12.55.115 at sentencing, whichever
27 is greater.

28 * Sec. 13. AS 47.10.140(c) is amended to read:

29 (c) The court shall immediately, and in no event more than 48 hours later, hold a hearing
30 at which the minor and the minor's parents or guardian if they can be found shall be present.
31 The court shall determine whether probable cause exists for believing the minor to be delinquent.

1 **The court shall inform the minor of the reasons alleged to constitute probable cause and the**
2 **reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to**
3 **confrontation of adverse witnesses, except as otherwise provided in this section.**

4 *** Sec. 14. AS 47.10.140 is amended by adding new subsections to read:**

5 **(h) In a hearing under this section relating to an offense described in AS 11.41.410 -**
6 **11.41.440 or 11.41.455, hearsay evidence of a statement related to the offense, not otherwise**
7 **admissible, made by a child who is the victim of the offense, may be admitted into evidence in**
8 **the probable cause portion of that hearing if**

9 **(1) the circumstances of the statement indicate its reliability;**

10 **(2) the child who made the statement is under 10 years of age when the hearsay**
11 **evidence is sought to be admitted;**

12 **(3) additional evidence is introduced to corroborate the statement; and**

13 **(4) the child who made the statement testifies at the probable cause portion of the**
14 **hearing or will be available to testify at trial.**

15 **(i) In this section, "statement" means an oral or written assertion or nonverbal conduct**
16 **if the nonverbal conduct is intended as an assertion.**

17 *** Sec. 15. Rule 215, Alaska Rules of Appellate Procedure, is repealed and readopted to read:**

18 **Rule 215. SENTENCE APPEAL. (a) NOTIFICATION OF RIGHT TO APPEAL**
19 **SENTENCE. At the time of imposition of any sentence of imprisonment of 45 days or more,**
20 **the judge shall inform the defendant as follows:**

21 **(1) If a sentence was imposed pursuant to a plea agreement under Criminal Rule**
22 **11(e)(1)(A) or (B), or if an agreed-upon minimum sentence was imposed pursuant to a plea**
23 **agreement under Criminal Rule 11(e)(1)(C), that the defendant has no right to appeal the**
24 **sentence;**

25 **(2) If a sentence was imposed that is greater than the minimum sentence agreed**
26 **upon pursuant to a plea agreement under Criminal Rule 11(e)(1)(C),**

27 **(A) that the defendant may appeal as excessive only that portion of the**
28 **sentence that exceeds the minimum sentence provided for in the plea agreement;**

29 **(B) that, upon such an appeal, the appellate court may reduce or increase**
30 **the sentence and that, by appealing the sentence under this rule, the defendant waives the**
31 **right to plead that a revision of the sentence resulting from the appeal places the**

1 defendant twice in jeopardy for the same offense; and

2 (C) that if the defendant wants counsel and is unable to pay for the
3 services of an attorney, the court will appoint an attorney to represent the defendant on
4 the appeal;

5 (3) If there was no plea agreement under Criminal Rule 11(e)(1)(A), (B), or (C),

6 (A) that the sentence may be appealed on the ground that it is excessive;

7 (B) that upon such an appeal the appellate court may reduce or increase
8 the sentence, and that by appealing the sentence under this rule, the defendant waives the
9 right to plead that a revision of the sentence resulting from the appeal places the
10 defendant twice in jeopardy for the same offense; and

11 (C) that if the defendant wants counsel and is unable to pay for the
12 services of an attorney, the court will appoint an attorney to represent the defendant on
13 the appeal.

14 * Sec. 16. Rule 6, Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to
15 read:

16 (u) TELEPHONIC TESTIMONY.

17 (1) A witness may participate telephonically in grand jury proceedings.

18 (2) If a witness participates telephonically in grand jury proceedings, after the
19 witness is sworn, the prosecuting attorney shall require the witness to

20 (A) state the location from which the witness is testifying and verify that
21 the witness is alone in a private room with the door closed;

22 (B) verify that all extensions for the telephone from which the witness is
23 testifying are not in use; and

24 (C) confirm that the witness will notify the grand jury immediately if any
25 person enters the room while the witness is testifying or if the witness becomes aware
26 that an extension for the telephone is put into use while the witness is participating
27 telephonically.

28 * Sec. 17. Rule 11(e)(1), Alaska Rules of Criminal Procedure, is amended to read:

29 (1) In General. The attorney for the state and the attorney for the defendant or
30 the defendant when acting pro se may engage in discussions with a view toward reaching an
31 agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or

1 to a lesser or related offense, the attorney for the state will move for dismissal of other charges,
2 or will recommend or agree not to oppose the imposition of a particular sentence, with the
3 understanding that such a recommendation or request is not binding upon the court. The
4 parties may also reach an agreement that

5 (A) a specific sentence is the appropriate disposition of the case;

6 (B) a sentence equal to or less than a specified maximum is the
7 appropriate disposition; or

8 (C) a sentence equal to or greater than a specified minimum is the
9 appropriate disposition [OR WILL DO BOTH].

10 * Sec. 18. Rule 11(e)(2), Alaska Rules of Criminal Procedure, is amended to read:

11 (2) Notice of Such Agreement. If the parties reach a plea agreement whereby a
12 plea of guilty or nolo contendere will be entered by the defendant in the expectation that a
13 specific sentence will be imposed or other charges before the court will be dismissed, then the
14 court shall require the disclosure of the agreement in open court at the time the plea is offered.
15 If the agreement is of the type specified in subparagraphs (e)(1)(A), (B), or (C), [ONCE THE
16 AGREEMENT HAS BEEN DISCLOSED] the court may accept or reject the agreement, or may
17 defer its decision to accept or reject the agreement until there has been an opportunity to
18 consider the [RECEIPT OF A] presentence report. If the agreement provides that the
19 attorney for the state will recommend a particular sentence or not oppose the defendant's
20 request for a particular sentence, the court shall advise the defendant that if the court does
21 not accept the recommendation or request, the defendant nevertheless has no right to
22 withdraw the plea.

23 * Sec. 19. Rule 11(e)(3), Alaska Rules of Criminal Procedure, is amended to read:

24 (3) Acceptance of Plea. If the court accepts the plea agreement, the court shall
25 inform the defendant that the judgment and sentence will embody [EITHER] the disposition
26 provided for in the plea agreement. If the agreement is of the type specified in subparagraph
27 (e)(1)(A) or (B), the court shall advise the defendant that the defendant waives the right to
28 appeal the sentence as excessive and waives the right to seek reduction of the sentence
29 under Criminal Rule 35(a). If the agreement is of the type specified in subparagraph
30 (e)(1)(C), the court shall advise the defendant that the defendant waives the right to appeal
31 as excessive that portion of the sentence that does not exceed the agreed-upon minimum and

1 that the defendant waives the right to seek reduction of the sentence below the agreed-upon
2 minimum [OR ANOTHER DISPOSITION MORE FAVORABLE TO THE DEFENDANT].

3 * Sec. 20. Rule 11(e)(4), Alaska Rules of Criminal Procedure, is amended to read:

4 (4) Rejection of Plea. If the court rejects the plea agreement, the court shall inform the
5 parties of this fact and advise the attorney for the state and the defendant personally in open
6 court that the court is not bound by the plea agreement. If the court concludes that the case
7 warrants a harsher sentence than that provided for in the plea agreement, the [THE] court
8 shall then afford the defendant the opportunity to withdraw his plea, and advise the defendant that
9 if he persists in his plea of guilty or nolo contendere, the disposition of the case may be less
10 favorable to the defendant than that contemplated by the plea agreement. If the court concludes
11 that the case warrants a more lenient sentence than that provided for in the plea agreement,
12 the court shall then afford the state the opportunity to withdraw from the agreement and
13 advise the state that, if the state does not withdraw, the disposition of the case may be more
14 favorable to the defendant than that contemplated by the plea agreement.

15 * Sec. 21. Rule 35(a), Alaska Rules of Criminal Procedure, is amended to read:

16 (a) CORRECTION OR REDUCTION OF SENTENCE. The court may correct an illegal
17 sentence at any time. The court may reduce a sentence, other than one imposed under
18 Criminal Rule 11(e)(1)(A) or (B), within 120 days of the day it is imposed. If the defendant
19 takes an appeal, and the judgment is affirmed or the appeal is dismissed, the court also may
20 reduce a sentence within 120 days of the day on which jurisdiction over the case is returned to
21 the trial court under Appellate Rule 507(b), unless the defendant petitions the United States
22 Supreme Court for certiorari, in which case the 120 days commences on the day that the Supreme
23 Court denies relief. No sentence imposed pursuant to a plea agreement under Criminal Rule
24 11(e)(1)(A) or (B) may be reduced under this rule. No sentence imposed pursuant to a plea
25 agreement under Criminal Rule 11(e)(1)(C) may be reduced below the minimum specified
26 in the plea agreement unless the prosecuting attorney agrees to the reduction of sentence.

27 * Sec. 22. Rule 10(c), Alaska Delinquency Rules, is amended to read:

28 (c) TEMPORARY DETENTION HEARING. Hearsay evidence of a statement which
29 is not otherwise admissible under the Evidence Rules is not admissible to prove probable cause
30 at a temporary detention hearing. In this paragraph, "statement" means an oral or written
31 assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

1 **However,**

2 **(1) otherwise inadmissible hearsay evidence of a statement** may be admitted
3 under the standard stated in paragraph (b) of this rule on the issue of whether the minor should
4 be removed from the home or detained; **and**

5 **(2) in a hearing for an offense under AS 11.41.410 - 11.41.440 or 11.41.455,**
6 **hearsay evidence of a statement related to the offense, not otherwise admissible, made by**
7 **a child who is the victim of the offense, may be admitted into evidence in the probable**
8 **cause portion of the hearing if**

9 **(A) the circumstances of the statement indicate its reliability;**

10 **(B) the child who made the statement is under 10 years of age when**
11 **the hearsay evidence is sought to be admitted;**

12 **(C) additional evidence is introduced to corroborate the statement;**

13 **and**

14 **(D) the child who made the statement testifies at the probable cause**
15 **portion of the hearing or will be available to testify at the adjudication hearing.**

16 * Sec. 23. Rule 609(b), Alaska Rules of Evidence, is amended to read:

17 (b) TIME LIMIT. Evidence of a conviction under this rule is inadmissible **in a criminal**
18 **case** if a period of more than **ten** [FIVE] years has elapsed since the date of the **person's**
19 **unconditional discharge on the offense** [CONVICTION]. The court may, however, allow
20 evidence of the conviction of the witness other than the accused in a criminal case after more
21 than **ten** [FIVE] years have elapsed if the court is satisfied that admission in evidence is
22 necessary for a fair determination of the case. **Evidence of a conviction under this rule is**
23 **inadmissible in a civil case if a period of more than five years has elapsed since the date of**
24 **the person's conviction.**

25 * Sec. 24. This Act takes effect July 1, 1992.