

**HOUSE BILL NO. 212**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE MACLEAN**

**Introduced: 3/10/93**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to a factor in aggravation of the presumptive term of a  
2 criminal sentence, and prohibiting the referral of a sentence based on application  
3 of that factor to a three-judge sentencing panel as an extraordinary circumstance."

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

5 \* Section 1. AS 12.55.155(c) is amended to read:

6 (c) The following factors shall be considered by the sentencing court and may  
7 aggravate the presumptive terms set out in AS 12.55.125:

- 8 (1) a person, other than an accomplice, sustained physical injury as a  
9 direct result of the defendant's conduct;
- 10 (2) the defendant's conduct during the commission of the offense  
11 manifested deliberate cruelty to another person;
- 12 (3) the defendant was the leader of a group of three or more persons  
13 who participated in the offense;
- 14 (4) the defendant employed a dangerous instrument in furtherance of

1 the offense;

2 (5) the defendant knew or reasonably should have known that the  
3 victim of the offense was particularly vulnerable or incapable of resistance due to  
4 advanced age, disability, ill health, or extreme youth or was for any other reason  
5 substantially incapable of exercising normal physical or mental powers of resistance;

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

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

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

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

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

16 (11) the defendant committed the offense pursuant to an agreement that  
17 the defendant either pay or be paid for the commission of the offense, and the  
18 pecuniary incentive was beyond that inherent in the offense itself;

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

22 (13) the defendant knowingly directed the conduct constituting the  
23 offense at an active officer of the court or at an active or former judicial officer,  
24 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,  
25 emergency medical technician, paramedic, ambulance attendant, or other emergency  
26 responder during or because of the exercise of official duties;

27 (14) the defendant was a member of an organized group of five or  
28 more persons, and the offense was committed to further the criminal objectives of the  
29 group;

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

31 (16) the defendant's criminal conduct was designed to obtain substantial

1           pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

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

5                       (18) the offense was a crime

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

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

12                              (C) specified in AS 11.41.410 - 11.41.425 or 11.41.455, and the  
13 defendant has previously engaged in conduct covered by one of those sections  
14 involving the same or another victim; or

15                              (D) specified in AS 11.41.434, 11.41.436, 11.41.438, or  
16 11.41.440 and the

17                                       (i) victim at the time of the offense resided in the  
18 same household as the offender; or

19                                       (ii) offender occupied a position of authority in  
20 relation to the victim; in this subparagraph, "position of authority"  
21 has the meaning given in AS 11.41.470;

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

24                       (20) the defendant was on furlough under AS 33.30 or on parole or  
25 probation for another felony charge or conviction that would be considered a prior  
26 felony conviction under AS 12.55.145(a)(2);

27                       (21) the defendant has a criminal history of repeated instances of  
28 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,  
29 similar in nature to the offense for which the defendant is being sentenced under this  
30 section;

31                       (22) the defendant knowingly directed the conduct constituting the

1 offense at a victim because of that person's race, sex, color, creed, physical or mental  
2 disability, ancestry, or national origin;

3 (23) the defendant is convicted of an offense specified in AS 11.71 and  
4 the offense involved the delivery of a controlled substance under circumstances  
5 manifesting an intent to distribute the substance as part of a commercial enterprise;

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

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

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

13 (27) the defendant, being 18 years of age or older,

14 (A) is legally accountable under AS 11.16.110(2) for the  
15 conduct of a person who, at the time the offense was committed, was under 18  
16 years of age and at least three years younger than the defendant; or

17 (B) is aided or abetted in planning or committing the offense  
18 by a person who, at the time the offense was committed, was under 18 years  
19 of age and at least three years younger than the defendant;

20 (28) the victim of the offense is a person who provided testimony or  
21 evidence related to a prior offense committed by the defendant.

22 \* Sec. 2. AS 12.55.165(b) is amended to read:

23 (b) In making a determination under (a) of this section, the court may not refer  
24 a case to a three-judge panel based on the defendant's potential for rehabilitation if the  
25 court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12),  
26 (15), (17), (18)(B), (18)(D), (20), (21), or (28) is present.