

HOUSE BILL NO. 334
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES BUNDE, Olberg

Introduced: 1/10/94

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal sentencing; and relating to mandatory life
2 imprisonment, parole, good time credit, pardon, commutation of sentence, reprieve,
3 furlough, and service of sentence at a correctional restitution center for offenders
4 with at least three serious felony convictions."

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

6 * Section 1. FINDINGS AND INTENT. (a) The legislature finds that

7 (1) community protection from persistent offenders is a priority for any
8 civilized society;

9 (2) a large percentage of criminal offenders convicted in this state have prior
10 criminal histories;

11 (3) punishments for criminal offenses should be proportionate to both the
12 seriousness of the crime and the prior criminal history of the offender;

13 (4) the legislature has a right and the responsibility to determine when to
14 impose a life sentence.

1 (b) By sentencing three-time, most serious offenders to prison for life without the
2 possibility of parole, the legislature intends to

3 (1) improve public safety by placing the most dangerous criminals in prison;

4 (2) reduce the number of serious, repeat offenders by tougher sentencing;

5 (3) set proper and simplified sentencing practices that both victims and
6 persistent offenders can understand; and

7 (4) restore public trust in our criminal justice system.

8 * Sec. 2. AS 12.55.025 is amended by adding a new subsection to read:

9 (i) The court when imposing sentence on a defendant convicted of a most
10 serious felony offense, that is not a third most serious felony for purposes of
11 sentencing under AS 12.55.125(I), shall provide the defendant with written or oral
12 notice of the mandatory 99-year term of imprisonment provided under AS 12.55.125(I)
13 for offenders with three or more most serious felony convictions. Failure to provide
14 this notification does not provide the defendant with a right to challenge the conviction
15 or sentence imposed nor does it prohibit the conviction from being used as a prior
16 most serious felony conviction under AS 12.55.125(I) and 12.55.145.

17 * Sec. 3. AS 12.55.125(c) is amended to read:

18 (c) A defendant convicted of a class A felony may be sentenced to a definite
19 term of imprisonment of not more than 20 years, and shall be sentenced to the
20 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
21 12.55.175:

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

24 (2) if the offense is a first felony conviction, other than for
25 manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or
26 caused serious physical injury during the commission of the offense, or knowingly
27 directed the conduct constituting the offense at a uniformed or otherwise clearly
28 identified peace officer, fire fighter, correctional officer, emergency medical technician,
29 paramedic, ambulance attendant, or other emergency responder who was engaged in
30 the performance of official duties at the time of the offense, seven years;

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

1 (4) if the offense is a third felony conviction and the defendant is not
2 subject to sentencing under (l) of this section, 15 years.

3 * Sec. 4. AS 12.55.125(d) is amended to read:

4 (d) A defendant convicted of a class B felony may be sentenced to a definite
5 term of imprisonment of not more than 10 years, and shall be sentenced to the
6 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
7 12.55.175:

8 (1) if the offense is a second felony conviction, four years;

9 (2) if the offense is a third felony conviction and the defendant is not
10 subject to sentencing under (l) of this section, six years;

11 (3) if the offense is a first felony conviction, and the defendant
12 knowingly directed the conduct constituting the offense at a uniformed or otherwise
13 clearly identified peace officer, fire fighter, correctional officer, emergency medical
14 technician, paramedic, ambulance attendant, or other emergency responder who was
15 engaged in the performance of official duties at the time of the offense, two years.

16 * Sec. 5. AS 12.55.125(e) is amended to read:

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

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

22 (2) if the offense is a third felony conviction and the defendant is not
23 subject to sentencing under (l) of this section, three years;

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

29 (4) if the offense is a first felony conviction, and the defendant violated
30 AS 08.54.520(a)(7) - (10), one year.

31 * Sec. 6. AS 12.55.125(i) is amended to read:

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

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

7 (2) if the offense is a first felony conviction, and the defendant
8 possessed a firearm, used a dangerous instrument, or caused serious physical injury
9 during the commission of the offense, 10 years;

10 (3) if the offense is a second felony conviction, 15 years ;

11 (4) if the offense is a third felony conviction and the defendant is not
12 subject to sentencing under (l) of this section, 25 years.

13 * Sec. 7. AS 12.55.125 is amended by adding a new subsection to read:

14 (l) Notwithstanding any provision of law, a defendant convicted of a most
15 serious felony offense shall be sentenced to a mandatory term of imprisonment of 99-
16 years when the defendant has been previously convicted of two or more most serious
17 felonies. If a defendant is sentenced to a mandatory 99-year sentence under this
18 section,

19 (1) imprisonment for the prescribed mandatory term may not be
20 suspended under AS 12.55.080;

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

22 (3) imprisonment for the prescribed mandatory term may not otherwise
23 be reduced except as provided in AS 33.20.070.

24 * Sec. 8. AS 12.55.145 is amended by adding a new subsection to read:

25 (f) For purposes of considering prior convictions in imposing sentence under
26 AS 12.55.125(l)

27 (1) a conviction in this state of an offense defined as a most serious
28 felony is a prior most serious felony conviction;

29 (2) a conviction in this or another jurisdiction of an offense having
30 elements similar to those of a most serious felony is considered a prior most serious
31 felony conviction;

1 (3) of the two or more previous most serious felony convictions at least
2 one of the previous convictions must have occurred before the commission of any of
3 the other most serious felony offenses.

4 * Sec. 9. AS 12.55.185 is amended by adding a new paragraph to read:

5 (14) "most serious felony" means any of the following felonies or a
6 felony attempt to commit any of the following felonies:

7 (A) any unclassified or class A felony prescribed under AS 11
8 or criminal solicitation of an unclassified or class A felony prescribed under
9 AS 11;

10 (B) assault in the second degree;

11 (C) sexual assault in the second degree;

12 (D) sexual abuse of a minor in the second degree;

13 (E) unlawful exploitation of a minor.

14 * Sec. 10. AS 33.16.090(b) is amended to read:

15 (b) Except as provided in (e) of this section, a prisoner is not eligible for
16 discretionary parole during the term of a presumptive sentence; however, a prisoner
17 is eligible for discretionary parole during a term of sentence enhancement imposed
18 under AS 12.55.155(a) or during the term of a consecutive or partially consecutive
19 presumptive sentence imposed under AS 12.55.025(e) or (g). A prisoner sentenced to
20 a mandatory 99-year term under AS 12.55.125(a) or (l) is not eligible for discretionary
21 parole during the entire term.

22 * Sec. 11. AS 33.20.010(a) is amended to read:

23 (a) Except as provided in (b) of this section and notwithstanding
24 AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the
25 state or a political subdivision of the state and sentenced to a term of imprisonment
26 that exceeds three days is entitled to a deduction of one-third of the term of
27 imprisonment rounded off to the nearest day if the prisoner follows the rules of the
28 correctional facility in which the prisoner is confined. A prisoner sentenced to a
29 mandatory 99-year term of imprisonment under AS 12.55.125(l) is not eligible for
30 a good time deduction.

31 * Sec. 12. AS 33.20.070 is amended by adding new subsections to read:

1 (b) It is recommended that the governor in exercising the clemency power
2 provided under the Constitution of the State of Alaska and this section not pardon,
3 commute the sentence of, or relieve an offender sentenced to a mandatory 99-year
4 term of imprisonment under AS 12.55.125(l) unless the offender is at least 60 years
5 of age, is not a sex offender, and has been determined to no longer be a threat to
6 society.

7 (c) If the governor grants a pardon, commutation of sentence, or reprieve to
8 an offender sentenced to a mandatory 99-year term of imprisonment under
9 AS 12.55.125(l) that results in the offender's release from imprisonment, the governor
10 shall provide to the legislature reports at least twice each year concerning the activities
11 and progress of the offender until the death of the offender or until 10 years have
12 elapsed since the offender's release, whichever occurs first.

13 * Sec. 13. AS 33.30.011 is amended to read:

14 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

15 (1) establish, maintain, operate, and control correctional facilities
16 suitable for the custody, care, and discipline of persons charged or convicted of
17 offenses against the state or held under authority of state law;

18 (2) classify prisoners;

19 (3) for persons committed to the custody of the commissioner, establish
20 programs, including furlough programs that are reasonably calculated to

21 (A) protect the public;

22 (B) maintain health;

23 (C) create or improve occupational skills;

24 (D) enhance educational qualifications;

25 (E) support court-ordered restitution; and

26 (F) otherwise provide for the rehabilitation and reformation of
27 prisoners, facilitating their reintegration into society;

28 (4) provide necessary medical services for prisoners in correctional
29 facilities or who are committed by a court to the custody of the commissioner,
30 including examinations for communicable and infectious diseases;

31 (5) provide necessary psychological or psychiatric treatment if a

1 physician or other health care provider, exercising ordinary skill and care at the time
2 of observation, concludes that

3 (A) a prisoner exhibits symptoms of a serious disease or injury
4 that is curable or may be substantially alleviated; and

5 (B) the potential for harm to the prisoner by reason of delay or
6 denial of care is substantial; [AND]

7 (6) establish minimum standards for sex offender treatment programs
8 offered to persons who are committed to the custody of the commissioner; and

9 (7) upon the prisoner's release for any reason from a correctional
10 institution, provide to each prisoner who has been convicted of a most serious
11 felony offense written notice of the mandatory 99-year term of imprisonment
12 provided under AS 12.55.125(l) for offenders with three or more most serious
13 felony convictions; failure to provide this notification does not provide the
14 prisoner with a cause of action against the state or any officer of the state or any
15 right to challenge the prisoner's conviction, nor does it prohibit the conviction
16 from being used as a prior most serious felony conviction under AS 12.55.125(l)
17 and 12.55.145; in this section, "most serious felony" has the meaning given in
18 AS 12.55.185.

19 * Sec. 14. AS 33.30.101 is amended by adding a new subsection to read:

20 (c) The regulations adopted under (a) of this section may not provide for the
21 granting of a furlough of any type to a prisoner sentenced to a mandatory 99-year term
22 of imprisonment under AS 12.55.125(l) unless the prisoner is at all times in the direct
23 custody of a correctional officer while the prisoner is away from the correctional
24 facility, except that if the furlough is for medical, psychiatric, or substance abuse
25 treatment the prisoner may be furloughed without direct supervision of a correctional
26 officer if the furlough is to a secure, inpatient treatment facility and the commissioner
27 finds that the furlough would not increase the risk of

28 (1) escape of the prisoner; and

29 (2) harm to the public.

30 * Sec. 15. AS 33.30.161(b) is amended to read:

31 (b) To be eligible to serve time in a correctional restitution center, the prisoner

1 (1) must be employable or eligible to work on community service
2 projects approved by the commissioner and agree to secure employment or participate
3 in community service projects and obey the rules of the center;

4 (2) may not be serving a sentence for conviction of an offense

5 (A) involving violence or the use of force;

6 (B) under AS 11.41.320, 11.41.330, or AS 11.56.740;

7 (3) may not have been convicted of a felony offense, in the state or
8 another jurisdiction, involving violence or the use of force; [AND]

9 (4) may not have been convicted of an offense under AS 11.41.410 -
10 11.41.470 or an offense in the state or another jurisdiction having elements
11 substantially identical to an offense under AS 11.41.410 - 11.41.470; and

12 (5) may not have been sentenced to a mandatory 99-year term of
13 imprisonment under AS 12.55.125(l).