

**CS FOR HOUSE BILL NO. 334(FIN) am**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Amended: 4/20/94**

**Offered: 4/12/94**

**Sponsor(s): REPRESENTATIVES BUNDE, Olberg, Porter**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to criminal sentencing; relating to the availability for good time  
2 credit for offenders convicted of certain first degree murders; relating to definite  
3 30- to 99-year terms of imprisonment for offenders convicted of an unclassified  
4 or class A felony that is a homicide, assault, kidnapping, sexual offense, or  
5 robbery and who have at least two prior most serious felony convictions; relating  
6 to parole, good time credit, pardon, commutation of sentence, modification or  
7 reduction of sentence, reprieve, furlough, and service of sentence at a correctional  
8 restitution center for offenders with at least three most serious felony convictions;  
9 defining 'most serious felony' as an unclassified or class A felony offense that  
10 is a homicide, assault, kidnapping, sexual offense, or robbery or an attempt or  
11 conspiracy to commit, or criminal solicitation of, an unclassified or class A felony

1 that is a homicide, assault, kidnapping, sexual offense, or robbery; and amending  
2 Alaska Rule of Criminal Procedure 35."

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

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

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

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

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

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

13 (b) By sentencing three-time, most serious offenders to prison for a definite term  
14 without the possibility of parole, the legislature intends to

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

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

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

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

20 \* Sec. 2. AS 12.55.025(e) is amended to read:

21 (e) Except as provided in (g) and (h) of this section, if the defendant has been  
22 convicted of two or more crimes, sentences of imprisonment shall run consecutively.

23 If the defendant is imprisoned upon a previous judgment of conviction for a crime, the  
24 judgment shall provide that the imprisonment commences at the expiration of the term  
25 imposed by the previous judgment. Nothing in AS 12.55.125(a) or (l) limits the court's  
26 ability to impose consecutive sentences.

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

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

1 12.55.175:

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

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

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

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

14 \* Sec. 4. AS 12.55.125(i) is amended to read:

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

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

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

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

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

27 \* Sec. 5. AS 12.55.125(j) is amended to read:

28 (j) A defendant sentenced to a mandatory term of imprisonment of 99 years  
29 under (a) **of this section or a definite term of imprisonment under (l)** of this section  
30 may apply for a modification or reduction of sentence under the Alaska Rules of  
31 Criminal Procedure after serving one-half of the mandatory **or definite** term without

1 consideration of good time earned under AS 33.20.010.

2 \* Sec. 6. AS 12.55.125 is amended by adding a new subsection to read:

3 (l) Notwithstanding any other provision of law, a defendant convicted of an  
4 unclassified or class A felony offense shall be sentenced to a definite term of  
5 imprisonment of at least 30 years but not more than 99 years when the defendant has  
6 been previously convicted of two or more most serious felonies and the prosecuting  
7 attorney has filed a notice of intent to seek a definite sentence under this subsection.  
8 If a defendant is sentenced to a definite sentence under this section,

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

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

12 (3) imprisonment for the prescribed mandatory term may not otherwise  
13 be reduced.

14 \* Sec. 7. AS 12.55.145(a) is amended to read:

15 (a) For purposes of considering prior convictions in imposing sentence under  
16 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

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

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

26 (C) [(3)] two or more convictions arising out of a single,  
27 continuous criminal episode during which there was no substantial change in  
28 the nature of the criminal objective are considered a single conviction unless  
29 the defendant was sentenced to consecutive sentences for the crimes; offenses  
30 committed while attempting to escape or avoid detection or apprehension after  
31 the commission of another offense are not part of the same criminal episode

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or objective;

(2) AS 12.55.125(l).

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

(B) of the two or more previous most serious felony convictions, at least one of the previous convictions must have occurred before the commission of any of the other most serious felony offenses and at least one of the other most serious felony convictions must have occurred prior to the commission of the present felony offense.

\* Sec. 8. AS 12.55.145(c) is amended to read:

(c) The defendant shall file with the court and serve on the prosecuting attorney notice of denial, consisting of a concise statement of the grounds relied upon and that may be supported by affidavit or other documentary evidence, no later than 10 days before the date set for the imposition of sentence if [IF] the defendant

(1) denies

(A) the authenticity of a prior judgment of conviction;

(B) [,] that the defendant is the person named in the judgment;

(C) [,] that the elements of a prior offense committed in this or another jurisdiction are similar [SUBSTANTIALLY IDENTICAL] to those of a

(i) felony defined as such under Alaska law;

(ii) most serious felony, defined as such under Alaska

law;

(D) [, OR] that a prior conviction occurred within the period specified in (a)(1)(A) [(a)(1)] of this section; or

(E) that a previous conviction occurred in the order required under (a)(2)(B) of this section; or

(2) if the defendant alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(1)(C) [(a)(3)] of this

1 section [, THE DEFENDANT SHALL FILE WITH THE COURT AND SERVE ON  
2 THE PROSECUTING ATTORNEY NOTICE OF DENIAL NO LATER THAN 10  
3 DAYS BEFORE THE DATE SET FOR IMPOSITION OF SENTENCE. THE  
4 NOTICE OF DENIAL MUST INCLUDE A CONCISE STATEMENT OF THE  
5 GROUNDS RELIED UPON AND MAY BE SUPPORTED BY AFFIDAVIT OR  
6 OTHER DOCUMENTARY EVIDENCE].

7 \* Sec. 9. AS 12.55.145(d) is amended to read:

8 (d) Matters alleged in a notice of denial shall be heard by the court sitting  
9 without a jury. If the defendant introduces substantial evidence that the defendant is  
10 not the person named in a prior judgment of conviction, that the judgment is not  
11 authentic, that the conviction did not occur within the period specified in (a)(1)(A)  
12 [(a)(1)] of this section, [OR] that a conviction should not be considered a prior felony  
13 conviction under (a)(1)(B) [(a)(2)] of this section or a prior most serious felony  
14 conviction under (a)(2)(A) of this section, or that a previous conviction did not  
15 occur in the order required under (a)(2)(B) of this section, then the burden is on  
16 the state to prove the contrary beyond a reasonable doubt. The burden of proof that  
17 two or more convictions should be considered a single conviction under (a)(1)(C)  
18 [(a)(3)] of this section is on the defendant by clear and convincing evidence.

19 \* Sec. 10. AS 12.55.145 is amended by adding a new subsection to read:

20 (f) Under this section, a prior conviction has occurred when a defendant has  
21 entered a plea of guilty, guilty but mentally ill, or nolo contendere, or when a verdict  
22 of guilty or guilty but mentally ill has been returned by a jury or by the court.

23 \* Sec. 11. AS 12.55.155(c)(20) is amended to read:

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)(1)(B) [AS 12.55.145(a)(2)];

27 \* Sec. 12. AS 12.55.185 is amended by adding a new paragraph to read:

28 (14) "most serious felony" means any unclassified or class A felony  
29 prescribed under AS 11.41 or an attempt or conspiracy to commit, or criminal  
30 solicitation under AS 11.31.110 of, an unclassified or class A felony prescribed under  
31 AS 11.41.

1 \* Sec. 13. AS 33.16.090(b) is amended to read:

2 (b) Except as provided in (e) of this section, a prisoner is not eligible for  
3 discretionary parole during the term of a presumptive sentence; however, a prisoner  
4 is eligible for discretionary parole during a term of sentence enhancement imposed  
5 under AS 12.55.155(a) or during the term of a consecutive or partially consecutive  
6 presumptive sentence imposed under AS 12.55.025(e) or (g). A prisoner sentenced to  
7 a mandatory 99-year term under AS 12.55.125(a) or a definite term under  
8 AS 12.55.125(l) is not eligible for discretionary parole during the entire term.

9 \* Sec. 14. AS 33.20.010(a) is amended to read:

10 (a) Except as provided in (b) of this section and notwithstanding  
11 AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the  
12 state or a political subdivision of the state and sentenced to a term of imprisonment  
13 that exceeds three days is entitled to a deduction of one-third of the term of  
14 imprisonment rounded off to the nearest day if the prisoner follows the rules of the  
15 correctional facility in which the prisoner is confined. A prisoner is not eligible for  
16 a good time deduction if the prisoner has been sentenced to a

17 (1) mandatory 99-year term of imprisonment under AS 12.55.125(a)  
18 after the effective date of this Act; or  
19 (2) definite term under AS 12.55.125(l).

20 \* Sec. 15. AS 33.30.101 is amended by adding a new subsection to read:

21 (c) The regulations adopted under (a) of this section may not provide for the  
22 granting of a furlough of any type to a prisoner sentenced to a definite term of  
23 imprisonment under AS 12.55.125(l) unless the prisoner is at all times in the direct  
24 custody of a correctional officer while the prisoner is away from the correctional  
25 facility.

26 \* Sec. 16. AS 33.30.161(b) is amended to read:

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

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

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

- 1 (A) involving violence or the use of force;  
2 (B) under AS 11.41.320, 11.41.330, or AS 11.56.740;  
3 (3) may not have been convicted of a felony offense, in the state or  
4 another jurisdiction, involving violence or the use of force; [AND]  
5 (4) may not have been convicted of an offense under AS 11.41.410 -  
6 11.41.470 or an offense in the state or another jurisdiction having elements  
7 substantially identical to an offense under AS 11.41.410 - 11.41.470; and  
8 (5) may not have been sentenced to a definite term of imprisonment  
9 under AS 12.55.125(l).

10 \* Sec. 17. APPLICABILITY. References to prior or previous convictions in this Act apply  
11 to all convictions occurring before, on, or after the effective date of this Act.

12 \* Sec. 18. AS 12.55.125(j), amended by sec. 5 of this Act, has the effect of amending  
13 Alaska Rule of Criminal Procedure 35 by permitting a court to reduce or modify a sentence  
14 of imprisonment imposed under AS 12.55.125(l) after the defendant has served one-half of the  
15 term.