

HOUSE
COMMITTEE REPORT

5/1

(7)

Date referred: 2/7/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered HB 554

"An Act relating to sentencing."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 554 (JUD) same title
- new title

and recommends revised

further referral to the _____ Committee

and attaches:

- letter of intent
- first fiscal note *sup # 127*
- new fiscal note
- zero fiscal notes *with analysis sup 127*

SIGNING DO PASS:

2 zero fiscal notes
First

SIGNING OTHER RECOMMENDATIONS:

_____ (NO REC)
 _____ No Rec.

_____ *Kyle Hill*
 Chairman

Offered: 5/1/86
Referred: Finance

17 notes (first) } Sep 126
2 300 w/4 (first) }
3 3000 7/10/86

Utterance

Original sponsors: Clocksin, Adams,
Duncan, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 554 (Judiciary)

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 and discretionary
7 parole."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 12.55.015(d) is repealed and reenacted to read:

10 (d) The court, in imposing sentence on a defendant convicted of
11 (1) sexual assault or sexual abuse of a minor; (2) misconduct involv-
12 ing a controlled substance in the first, second, third, fourth, fifth
13 or sixth degree; or (3) a felony involving the abuse of alcohol, may
14 in addition to a sentence required by law, order the defendant to
15 participate in a treatment program for persons who are sex offenders
16 or a program for treatment of drug or alcohol abusers, if the court
17 determines that the treatment is appropriate. Participation may be
18 required as a condition of probation, a condition of suspended exe-
19 cution of sentence, or a condition of suspended imposition of sen-
20 tence. This subsection may not be construed to reduce a mandatory
21 minimum or presumptive sentence.

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

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

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

1 (2) if the offense is a first felony conviction, other than
2 for manslaughter, and the defendant possessed a firearm, used a dan-
3 gerous instrument, or caused serious physical injury during the com-
4 mission of the offense, or knowingly directed the conduct constituting
5 the offense at a uniformed or otherwise clearly identified peace
6 officer, fire fighter, correctional officer, emergency medical techni-
7 cian, paramedic, ambulance attendant, or other emergency responder who
8 was engaged in the performance of official duties at the time of the
9 offense, five [SEVEN] years;

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

11 (4) if the offense is a third felony conviction, 15 years.

12 * Sec. 3. AS 12.55.155(a) is amended to read:

13 (a) If a defendant is convicted of an offense and is subject to
14 sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or
15 (f) and

16 (1) the presumptive term is four years or less, the court
17 may decrease the presumptive term by an amount as great as the pre-
18 sumptive term for factors in mitigation or may increase the presump-
19 tive term up to the maximum term of imprisonment for factors in aggra-
20 vation;

21 (2) the presumptive term of imprisonment is more than four
22 years, the court may decrease the presumptive term by an amount as
23 great as 75 [50] percent of the presumptive term for factors in miti-
24 gation or may increase the presumptive term up to the maximum term of
25 imprisonment for factors in aggravation.

26 * Sec. 4. AS 12.55.155(d) is amended by adding new paragraphs to read:

27 (17) the defendant is under the age of 25;

28 (18) the defendant has demonstrated good potential for
29 rehabilitation;

1 (19) the offense was isolated and not premeditated;

2 (20) the defendant, before apprehension, notified law en-
3 forcement authorities of the defendant's involvement in the criminal
4 conduct.

5 * Sec. 5. AS 33.16.090(b) is amended to read:

6 (b) Unless a prisoner is serving a term for the prisoner's first
7 conviction of an offense subject to a presumptive sentence, a [A]
8 prisoner is not eligible for discretionary parole during the term of a
9 presumptive sentence; however, a prisoner is eligible for
10 discretionary parole during a term of sentence enhancement imposed
11 under AS 12.55.155(a) or during the term of a consecutive or partially
12 consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).
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702d

Introduced: 2/7/86
Referred: Judiciary and
Finance

BY CLOCKSIN, ADAMS, DUNCAN,
GOLL, HERRMANN, 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
10 to a definite term of imprisonment of not more than 20 years, and
11 shall be sentenced to the following presumptive terms, subject to
12 adjustment as provided in AS 12.55.155 - 12.55.175:

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

16 (2) IF THE OFFENSE IS A FIRST FELONY CONVICTION, OTHER THAN
17 FOR MANSLAUGHTER, AND THE DEFENDANT POSSESSED A FIREARM, USED A DAN-
18 GEROUS INSTRUMENT, OR CAUSED SERIOUS PHYSICAL INJURY DURING THE COM-
19 MISSION OF THE OFFENSE, OR KNOWINGLY DIRECTED THE CONDUCT CONSTITUTING
20 THE OFFENSE AT A UNIFORMED OR OTHERWISE CLEARLY IDENTIFIED PEACE
21 OFFICER, FIRE FIGHTER, CORRECTIONAL OFFICER, EMERGENCY MEDICAL TECUNI-
22 CIAN, PARAMEDIC, AMBULANCE ATTENDANT, OR OTHER EMERGENCY RESPONDER WHO
23 WAS ENGAGED IN THE PERFORMANCE OF OFFICIAL DUTIES AT THE TIME OF THE
24 OFFENSE, SEVEN YEARS;

25 (3) if the offense is a second felony conviction, nine
26 [10] years;

27 (2) [(4)] if the offense is a third felony conviction, (14)
28 [15] years.

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

HB 554

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), (1)(1), or (1)(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).
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**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 554 # 1
 Title : "An Act relating to sentencing."

Sponsor : Representative Clocksin
 Requestor : H. Judiciary
 Date of Request : 2/12/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Alaska State Troopers

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles Admin. Assistant
 Division : Commissioner's Office

Phone : 465-4336

Date : 2/14/86

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 2/14/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Department of Public Safety

HOUSE BILL 554 # 1

Position Paper

Commissioned Officers within the Department of Public Safety, as well as other law enforcement officers within the State of Alaska, are charged with the responsibility to protect the life and property of all persons within the jurisdiction of this State. You, as members of the Alaska Legislature, duly elected representatives of the citizens of the State of Alaska, are likewise charged with the responsibility to insure that the citizens of this State can reside in a safe environment.

This bill, in the opinion of law enforcement, takes a tremendous step towards reducing the ability of law enforcement to protect the citizens we serve. This law allows those predators to serve a minimal period of incarceration and does nothing to address the needs of the victim or the protection of our citizens.

This bill is allegedly designed to address the first offender who, in the sponsor's opinion, may be receiving an excessive sentence. There are, in fact, very few individuals who are first offenders when they are arrested. What we are really talking about in this bill is reducing the sentence of those individuals who may have an extensive history of committing crimes, but who had never been previously convicted.

In Alaska, consistent with the rest of the nation, law enforcement agencies solve approximately 25 percent of the crimes by arresting the defendants. Due to the abolishment of plea bargaining, the prosecutors heavily screen cases before accepting the case for trial. Thus, even a smaller number are eventually charged within our court system. Of those, fewer yet plead guilty or are convicted. The odds of committing a crime, not being prosecuting, and not being convicted are heavily in favor of the offender.

To specifically address this bill, I find that it is extremely confusing to interpret.

The only mandatory sentences which are not affected by this bill are first degree murder, second degree murder, kidnapping, and misconduct involving a controlled substance in the first degree.

Virtually every other crime has had the sentencing structure gutted.

There is no longer any protection for a peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other first responder who is engaged in the performance of his official duties at the time of the offense. This law reduces the jeopardy of the offender, and increases the jeopardy of those who respond to give aid.

An individual who commits a heinous rape or sexually abuses a minor and is convicted for the first time could receive any sentence, including, as I understand this bill, a suspended sentence or a suspended imposition.

Although this bill purports to reduce presumptive sentencing by only one year for subsequent felony convictions, this bill allows much more discretion. For Class B and Class C felony convictions for the second or third offense, the sentence can be suspended or the individual can receive a suspended imposition of sentence. For a Class A felony, an individual convicted of sexual assault or sexual abuse of a minor in the first degree, several mitigating factors have been incorporated into this bill.

1. The defendant is under the age of 25. We fail to find any valid reason for this to be a mitigating circumstance.
2. The defendant has demonstrated good potential for rehabilitation. Who is to judge that the defendant has demonstrated good potential for rehabilitation? In many instances, the individual has not even been under observation from the time that he was first apprehended until he is convicted. Will this result in bringing in various psychiatrists to argue their less than exact scientific findings?
3. The defendant has no record of criminal law violations. This makes no sense, since we are talking about those individuals who are being presumptively sentenced for second and third offenses.
4. The defendant has demonstrated sincere remorse for the offense. It has been my experience, after 23 years in this profession, that most individuals, when they are apprehended, are sincerely remorseful. I would find it extremely subjective

for an individual to determine whether the remorse was for the victim or for the fact that the defendant was apprehended.

5. The offense was isolated, and not premeditated. What does this mean, if an individual is involved in a drunk driving manslaughter case, is it not isolated? It certainly is not premeditated. If an individual has two or three beers and rapes a woman in a hospital parking lot, is the offense not isolated? Was it a crime of opportunity?
6. The defendant's capacity to formulate the requisite culpable mental state for the offense was diminished to a degree insufficient to constitute a complete defense. I suppose this means that everyone who claims that he was using drugs or alcohol at the time of the offense was in a diminished mental state.
7. The defendant sought counseling or other mental health treatment for the conduct underlying the criminal offense before discovery of the offense or apprehension of the defendant. This situation would probably only occur in those child sexual abuse cases, where the family has become aware of the parent or other relative's abhorrent behavior. Is this a result of pressures from within the family, or the defendant acknowledging that he needs treatment? If, in fact, it is the latter, he certainly had the opportunity to discuss his abnormal desires with a competent professional before committing the act.
8. The defendant, before apprehension, notified law enforcement authorities of the defendant's involvement in the criminal conduct. It would appear that if an individual is being questioned for an offense without being taken into custody, and admits that offense, this could also be considered as a mitigating circumstance. If the defendant knew a warrant had been issued, he/she could call in before apprehension.

Section 11 of the proposed bill purportedly amends AS 33.15.180(a). Although this statute was repealed in the last legislative session, it would appear the sponsor's intent, in my opinion, is that any individual who is sentenced for a term over 180 days, other than a juvenile delinquent, is eligible for parole.

Alaska is unique. Alaska has both a young and transient population. Both of these factors contribute to a higher crime rate, according to many national studies.

Although it is too early to tell, it would appear that crime in Alaska is beginning to level off. Although we do not know exactly what the cause for this is, it could be Alaska's tough presumptive sentencing laws, which discourage individuals from coming to Alaska to commit their crimes.

Previous legislators cast presumptive sentencing, with the intent to insure a measure of certainty and uniformity in prison sentences, while allowing mitigating or extraordinary cases to be treated differently. The primary benefit of presumptive sentencing has been to minimize disparity created by widely varying sentencing practices among individual judges. Any law enforcement officer or criminal attorney knows that the particular judge assigned to a case is the single most significant factor in the ultimate sentence imposed. This law would create an incentive for "judge shopping." It would turn the sentencing system into the "luck of the draw."

It is true that there are more sex offenses being reported, investigated, and referred to prosecution. That would indicate that the sponsor of this bill is incorrect in indicating that people are not reporting the offenses because of the length of sentencing. We believe that more crimes are being reported now due to the publicity or the offense and the emphasis placed on sex offenses by our legislators. However, the trend does show some indication of levelling off.

Although one of the sponsors of this bill indicated there may be too much control by prosecutors, our system is designed to insure that unjust convictions do not occur. The defendant is represented by counsel and he does have a right to trial by jury. Offenses must be proven beyond a reasonable doubt. The individual may appeal those convictions, even after that determination has been made by a trial judge and jury. The only real danger to the public is that a prosecutor may choose a charge which is too low or too lenient. That concern is not addressed by this bill.

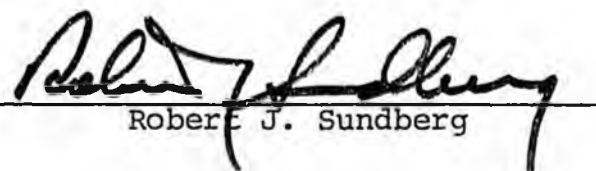
During the last two years, I have heard many individuals testify before this legislative body regarding the traumatization of a child victim. Some of these individuals have expressed concern as a result of the criminal justice system breaking up the family unit, as a result of presumptive sentencing. Many have explained that the father who rapes his child is not the same as a predator who rapes a

stranger's child. I ask you, who is better off, the child who is traumatized by a stranger who has loving parents to go home to for support, or a child who is traumatized by an individual whom that child loves and respects, and who believes is there to protect her or him? If the family unit turns on a child who becomes a victim within their own family, then maybe it is in the best interest of the child to remove the child from that family unit, rather than allow the child to continue to be victimized by either the defendant or the other family members.

If this bill is designed to reduce the cost of corrections, I believe other avenues should be explored.

Certainly, the cost of criminal justice in Alaska, as well as in the rest of the nation, is rising.

In good conscience, I do not believe we can reduce that cost by increasing the risk to those we serve.


Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Page 1 of 2

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 554 # 2
 Title: "An Act relating to sentencing."

Sponsor: Repr. Clocksin
 Requestor: House Judiciary Committee
 Date of Request: February 13, 1986

FISCAL DETAIL

Agency Affected: Department of Law
 BRU: Prosecution

Components: All Components

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/20/86
 Approved by Commissioner: Richard I. Pegues/For/
Harold M. Brown, Attorney General Date: 2/20/86
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554 # 2 Page 2 of 2

This bill would remove first time offenders from the presumptive sentencing provisions of AS 12.55, would reduce all other presumptive sentences, would make many repeat felony offenders eligible for suspended impositions of sentence and suspended sentences, would extend parole eligibility to presumptively sentenced prisoners and would create a number of additional mitigating factors.

This bill will probably reduce the number of trials of first time felony offenders charged with class A felonies or unclassified sexual assaults. Because of the addition of new mitigating factors such as "good potential for rehabilitation" and "sincere remorse for the offense," it is anticipated that sentencing proceedings will delve into areas involving psychological evidence that is for the most part irrelevant under current law. Sentencing proceedings may, as a consequence, be longer and more complicated. In addition, more cases may undergo additional sentencing proceedings before the three-judge panel.

Because potentially more prisoners will be placed under probation or parole supervision, there may be more revocation proceedings and, in the appropriate case, further sentencing procedures. It is difficult to assess whether there would be substantial savings in trial resources. However, there would be substantially less expense and inconvenience in connection with jury service and more flexibility for the court and the Department of Law in calendaring cases for post plea proceedings.

FEB 20 '86 15:34 ACA 2ND JUD DIST FAX276-6342

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

REQUEST

Page 1 of 2

Revision Date : _____

Bill/Resolution No. : HB 554 #3
 Title : An Act Relating to Presumptive Sentencing.

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Sponsor : _____
 Requestor : _____
 Date of Request : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Karla Forsythe
 Division : Alaska Court System

Phone : 264-8228
 Date : 2/19/86

Approved by Commissioner : Arthur H. Snowden, II
 Agency : Alaska Court System

Date : 2/19/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FEB 20 '86 15:34 ACA 2ND JUD DIST FAX276-6342

#3 Page 2 of 2
HB 554: Presumptive Sentencing
Fiscal Impact

Although the precise impact of HB 554 is difficult to quantify, it appears that this bill would permit the judiciary to devote more of its resources to the civil caseload, decreasing the delay in scheduling civil trials.

Alaska Court System statistics reflect that 18% of all felonies filed in superior court go to trial, more than double the national trial rate as reported by the National Center for State Courts. Alaska's presumptive sentencing scheme, combined with the ban on plea bargaining, appears to have contributed to this disproportionately high trial rate.

It is anticipated that the provisions of this bill which decrease the length of presumptive terms will have limited impact on the courts. However, eliminating first offenders from the presumptive scheme may have a significant and positive impact. In a recent study assessing the impact of sentencing patterns for sex-related offenses, the Judicial Council found that the trial rate for these defendants was double the rate for defendants sentenced non-presumptively. If this ratio can be generalized to all felonies, eliminating first offenders from presumptive sentencing could significantly reduce the overall felony trial rate.

Felonies comprise only 5% of the Anchorage superior court workload, but require half of the court's judicial resources. A decreased felony trial rate would result in more expeditious processing of domestic relations matters, commercial cases and other disputes which comprise the civil portion of the court's workload.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST Page 1 of 4

Bill/Resolution No. : HB 554 #4
 Title : "An Act Relating to Sentencing."

Sponsor : Representative Clocksin
 Requestor : House Judiciary Committee
 Date of Request : February 19, 1986

FISCAL DETAIL

Agency Affected : Corrections
 BRU : Administration and Support and Operations

Components : Various

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		113.6	118.1	122.9	127.8	132.9
TRAVEL		113.5	119.2	125.1	131.4	138.0
CONTRACTUAL		115.0	120.7	126.8	133.1	139.8
SUPPLIES		1.2	1.3	1.3	1.4	1.4
EQUIPMENT		20.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	363.3	359.3	376.1	393.7	412.1
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	363.3	359.3	376.1	393.7	412.1
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	363.3	359.3	376.1	393.7	412.1

POSITIONS :

FULL-TIME	-0-	3	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by : Susan E. Knighton *Susan E. Knighton* Research Analyst Phone : 465-3376
 Division : Corrections Date : 2-19-86

Approved by Commissioner : [Signature] Date : 2-19-86
 Agency : Corrections

Distribution (by Agency preparing fiscal note) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554 #4 Page 2 of 4

Currently the Parole Board is holding 200 parole cases a year. This bill provides for increased parole eligibility that would approximately double the number of parole case hearings per year. To accommodate the increased workload the department has two options.

Option I (Displayed on fiscal note form): Continue to operate with a 5 member Parole Board composed of lay persons with increased support staff.

Probation Officer II 16A		
\$2702/mo x 12	=	\$ 32,424
SBS @ .0613	=	1,988
RET @ .1325	=	4,296
VAR BEN @ .051694	=	1,676
HI @ \$252.29/mo	=	<u>3,027</u>
		<u>\$ 43,411 x 2 = \$ 86,822</u>

Clerk Typist II 7B		
\$1586/mo x 12	=	\$ 19,032
SBS @ .0613	=	1,167
RET @ .1325	=	2,522
VAR BEN @ .051694	=	984
HI @ \$252.29/mo	=	<u>3,027</u>
		<u>= \$ 26,732</u>

Total Personnel Services	\$113,554
Assumed 4% inflation in personal services for fiscal years beyond FY87	

Travel	\$113,500
Provides for increased travel for 5 board members and 2 support staff to hold increased number of hearings	

Contractual	\$115,000
Additional board members compensation, increased office space rent and utilities	

Supplies	\$ 1,200
----------	----------

Equipment	
Office furniture and word processing equipment for new staff, one-time expenditure	<u>\$ 20,000</u>

Total FY87 Costs	\$363,254
Assumed 5% inflation in other than personal services line items for fiscal years beyond FY87	

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554 # 4 Page 3 of 4

Option II: Provide for a full-time, compensated Parole Board of three members and support staff.

Parole Board Member 21A		
\$3,812/mo x 12	=	\$ 45,744
SBS @ .0613 or 2800	=	2,800
RET @ .1325	=	6,061
VAR BEN @ .051694	=	2,365
HI @ \$252.29/mo	=	3,027
		\$ 59,997 x 3 = \$179,991
Probation Officer II 16A		
\$2,702/mo x 12	=	\$ 32,424
SBS @ .0613	=	1,988
RET @ .1325	=	4,296
VAR BEN @ .051694	=	1,676
HI @ \$252.29/mo	=	3,027
		\$ 43,411 x 2 = \$ 86,822
Clerk Typist II 7B		
\$1586/mo x 12	=	\$ 19,032
SBS @ .0613	=	1,167
RET @ .1325	=	2,522
VAR BEN @ .051694	=	984
HI @ \$252.29/mo	=	3,027
		\$ 26,732
Delete Executive Director		(\$ 75,231)
		\$218,314
Travel		\$113,500
Same as Option I		
Contractual		\$ 30,000
Increase office rent, delete board members compensation		
Supplies		\$ 2,000
Equipment		\$ 30,000
Total FY87 Costs		\$393,814

For fiscal years beyond FY87 the inflation rates of Option I would be assumed for Option II. FY88 - \$379.8, FY89 - \$396.5, FY90 - \$414.0, FY91 - \$432.2.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554 # 4 Page 4 of 4

This proposed legislation reflects only minimal change to the current criminal code sentencing provisions. However, these minor changes will represent cost savings to the state in future years.

The following table represents the reduction in prisoner-years associated with presumptively sentenced felons projected to be admitted over the next five years.

	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Number of felons admitted to serve presumptive sentences	424	458	495	535	578
Total prisoner-years to be served by felons sentenced presumptively-current criminal code	2,544	2,748	2,970	3,210	3,468
Total prisoner-years to be served with proposed changes	2,264	2,446	2,643	2,857	3,087
Difference in prisoner-years	280	302	327	353	381

A person currently serving a 10 year presumptive sentence will generally serve 7.5 years in prison at a cost of \$219,000 (7.5 years x 365 days x \$80 day). If the presumptive sentence was reduced to 9 years, the prisoner will serve 6.75 years in jail at a total cost of \$197,000. Thus, the reduction in sentence length would result in a savings of \$21,900 in the seventh year.

The cumulative savings associated with the reduction in prisoner-years in the table above which would be theoretically realized over a 10-15 year period amounts to \$47,975,600, assuming no other changes in sentencing laws and a stable population base.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST Page 1 of 2

Bill/Resolution No.: HB 554 # 5

Title: "An Act relating to sentencing."

Sponsor: Representative Clocksin

Requestor: House Judiciary

Date of Request: February 20 1986

FISCAL DETAIL

Agency Affected: Department of Administration

BRU: Public Defender Agency

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLADS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The Alaska Public Defender Agency's caseload is rapidly becoming out of control for the number of attorneys authorized for that Agency. National caseload statistics for the maximum number of

Prepared by: Dana Fabe, Public Defender

Division: Public Defender Agency

Phone: 279-7541

Date: February 20, 1986

Approved by Commissioner: [Signature]

Agency: ADMINISTRATION

Date: 2/24/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 554 # 5 Page 2 of 2

cases to be handled by a public defender during a year indicate that this Agency is 7.5 attorneys short of the minimum number required to handle its caseload. Furthermore, drastic increases in the number of jury trials in felony cases has caused greater stress on the attorneys, resulting in delays in processing of cases through the court system.

Because the Public Defender Agency is already operating without the recommended minimum number of attorneys to handle its caseload, this Agency cannot give up positions based on this legislation. However, this legislation will allow the attorneys in this Agency to handle the assigned caseload more quickly and efficiently and to absorb future increases in felony caseloads without the requirement of additional funding. This is due to the fact that the number of jury trials will certainly decrease if presumptive sentencing is not required for first offenders. Currently, a first time felony offender charged with a Class A felony is subject to a five-year presumptive term regardless of whether he demands a jury trial or pleads guilty to the charge. If presumptive terms are removed for first offenders, many offenders now electing a trial will plead guilty in the hope that their cooperation and demonstrative remorse will be reflected in their sentence. If the number of trials decreases for the Public Defender Agency, the number of felony appeals decreases as well, since there is no right to an appeal after a defendant has pled guilty to the charge. Similarly, the number of post-conviction relief actions handled by the Public Defender Agency should decrease.

For the above reasons, a zero fiscal note is anticipated for this legislation.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

REQUEST

Bill/Resolution No.: HB554 # 6
 Title: An Act relating to sentencing...
 Sponsor: Rep. Clocksin
 Requestor: Judiciary
 Date of Request: 2/13/86

FISCAL DETAIL

Agency Affected: Dept. of Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-				
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-				

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-				
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-				

POSITIONS :

FULL-TIME	-0-	-0-				
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Brant McGee, Public Advocate *BMG* Phone: 274-1684
 Division: Office of Public Advocacy Date: 2/21/86
 Approved by Commissioner: Eleanor Andrews *E.A.* Date: _____
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA STATE LEGISLATURE

14th Legislature SECOND Session

HOUSE BILL NO. 554

By CLOCKSIN, ADAMS, DUNCAN, GOLL, HERRMANN, KOPONEN, M.M. MILLER, SUND, TAYLOR, WALLIS

"An Act relating to sentencing."

Sentencing

Introduced in the House .. 2/7....., 19. 86

HISTORY IN THE HOUSE

19 86	Feb 7	Read first time and referred to Committee on JUDICIARY AND FINANCE												
		Reported back with recommendation that												
		Read second time and												
		Read third time and												
		<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused		
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Yeas	Yeas													
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Reconsideration														
PASS	Effective Date													
Yeas	Yeas													
Nays	Nays													
Absent	Absent													
Excused	Excused													
		Reported correctly engrossed Signed by Speaker Sent to Senate												
CHIEF CLERK OF THE HOUSE														

HISTORY IN THE SENATE

19		Read first time and referred to Committee on												
		Reported back with recommendation that												
		Read second time and												
		Read third time and												
		<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused		
PASS	Effective Date													
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Nays	Nays													
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Excused	Excused													
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Reconsideration														
PASS	Effective Date													
Yeas	Yeas													
Nays	Nays													
Absent	Absent													
Excused	Excused													
		Reported correctly engrossed Signed by President Returned to House												
SECRETARY OF THE SENATE														

HISTORY IN THE HOUSE

19		Received from Senate
		Concurred in Senate amendment thus adopting: VOTE
		Failed to concur in Senate amendment; asked Senate to recede VOTE
		Senate receded from amendment VOTE
		Senate failed to recede from amendment VOTE
		CC appointed by House
		CC appointed by Senate
		CC adopted by House VOTE
		CC adopted by Senate VOTE
		To enrolling Reported correctly enrolled Sent to Governor by Governor
		Filed with Lt. Governor
		Chapter No.

Offered: 5/1/96
Referred: Finance

Original sponsors: Clocksin, Adams,
Duncan, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 554 (Judiciary)
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 and discretionary
7 parole."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 12.55.015(d) is repealed and reenacted to read:

10 (d) The court, in imposing sentence on a defendant convicted of
11 (1) sexual assault or sexual abuse of a minor; (2) misconduct involv-
12 ing a controlled substance in the first, second, third, fourth, fifth
13 or sixth degree; or (3) a felony involving the abuse of alcohol, may,
14 in addition to a sentence required by law, order the defendant to
15 participate in a treatment program for persons who are sex offenders
16 or a program for treatment of drug or alcohol abusers, if the court
17 determines that the treatment is appropriate. Participation may be
18 required as a condition of probation, a condition of suspended exe-
19 cution of sentence, or a condition of suspended imposition of sen-
20 tence. This subsection may not be construed to reduce a mandatory
21 minimum or presumptive sentence.

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

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

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

1 (2) if the offense is a first felony conviction, other than
2 for manslaughter, and the defendant possessed a firearm, used a dan-
3 gerous instrument, or caused serious physical injury during the com-
4 mission of the offense, or knowingly directed the conduct constituting
5 the offense at a uniformed or otherwise clearly identified peace
6 officer, fire fighter, correctional officer, emergency medical techni-
7 cian, paramedic, ambulance attendant, or other emergency responder who
8 was engaged in the performance of official duties at the time of the
9 offense, five [SEVEN] years;

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

11 (4) if the offense is a third felony conviction, 15 years.

12 * Sec. 3. AS 12.55.155(a) is amended to read:

13 (a) If a defendant is convicted of an offense and is subject to
14 sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or
15 (i) and

16 (1) the presumptive term is four years or less, the court
17 may decrease the presumptive term by an amount as great as the pre-
18 sumptive term for factors in mitigation or may increase the presump-
19 tive term up to the maximum term of imprisonment for factors in aggra-
20 vation;

21 (2) the presumptive term of imprisonment is more than four
22 years, the court may decrease the presumptive term by an amount as
23 great as 75 [50] percent of the presumptive term for factors in miti-
24 gation or may increase the presumptive term up to the maximum term of
25 imprisonment for factors in aggravation.

26 * Sec. 4. AS 12.55.155(d) is amended by adding new paragraphs to read:

27 (17) the defendant is under the age of 25;

28 (18) the defendant has demonstrated good potential for
29 rehabilitation;

1 (19) the offense was isolated and not premeditated;

2 (20) the defendant, before apprehension, notified law en-
3 forcement authorities of the defendant's involvement in the criminal
4 conduct.

5 * Sec. 5. AS 33.16.090(b) is amended to read:

6 (b) Unless a prisoner is serving a term for the prisoner's first
7 conviction of an offense subject to a presumptive sentence, a [A]
8 prisoner is not eligible for discretionary parole during the term of a
9 presumptive sentence; however, a prisoner is eligible for
10 discretionary parole during a term of sentence enhancement imposed
11 under AS 12.55.155(a) or during the term of a consecutive or partially
12 consecutive presumptive sentence imposed under AS 12.55.025(e) or (g).

Introduced: 2/7/86
Referred: Judiciary
and Finance

BY CLOCKSIN, ADAMS, DUNCAN,
GOLL, HERRMAN, 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
10 to a definite term of imprisonment of not more than 20 years, and
11 shall be sentenced to the following presumptive terms, subject to
12 adjustment as provided in AS 12.55.155 - 12.55.175:

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

16 (2) IF THE OFFENSE IS A FIRST FELONY CONVICTION, OTHER THAN
17 FOR MANSLAUGHTER, AND THE DEFENDANT POSSESSED A FIREARM, USED A DAN-
18 GEROUS INSTRUMENT, OR CAUSED SERIOUS PHYSICAL INJURY DURING THE COM-
19 MISSION OF THE OFFENSE, OR KNOWINGLY DIRECTED THE CONDUCT CONSTITUTING
20 THE OFFENSE AT A UNIFORMED OR OTHERWISE CLEARLY IDENTIFIED PEACE
21 OFFICER, FIRE FIGHTER, CORRECTIONAL OFFICER, EMERGENCY MEDICAL TECHNI-
22 CIAN, PARAMEDIC, AMBULANCE ATTENDANT, OR OTHER EMERGENCY RESPONDER WHO
23 WAS ENGAGED IN THE PERFORMANCE OF OFFICIAL DUTIES AT THE TIME OF THE
24 OFFENSE, SEVEN YEARS;

25 (3)] if the offense is a second felony conviction, nine
26 [10] years;

27 (2) [(4)] if the offense is a third felony conviction, (14)
28 [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).