

**SB**

**56**

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 1/14/05

FURTHER: Finance

Date of 5-Day Notice: 1/13/2005  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 1/20/05

Judiciary Committee considered **SENATE BILL NO. 56**

**SB 56 CRIMINAL LAW/PROCEDURE/SENTENCING**

"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."

and recommends:

- be replaced with CS SP- 56 (JUD)
- adopt previous CS (    )
- attached amendment(s)
- adopt Letter of Intent by JUD Committee
- further referral to      Committee

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR #     

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	1/20/05			X	1
DOCL	1/18/05			X	2
DOCL	1/13/05			X	3
DPS	1/19/05			X	4
SUD	1/20/05			X	5

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
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CHAIR: <i>[Signature]</i>	X			

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# Alaska State Legislature

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## SPONSOR STATEMENT – SENATE BILL 56

"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."

Senate Bill 56 modifies the laws governing the presumptive sentencing of felony offenders in Alaska, as a result of *Blakely v. State of Washington*, a United States Supreme Court decision issued in June 2004. The court struck down Washington's sentencing laws by finding that under the Sixth Amendment a defendant has the right to have a jury, not a judge, determine whether aggravating circumstances exist to justify increasing a defendant's sentence above the statutorily prescribed term. The requirements of *Blakely* directly affect Alaska's sentencing laws. Senate Bill 56 addresses the provisions that apply to Alaska's sentencing structure and will eliminate the great confusion created in Alaska's courts as a result of *Blakely*.

Alaska's current felony sentencing statutes set out presumptive terms establishing a specific fixed term of imprisonment that in essence acts as both the minimum and maximum sentences that can be imposed, unless the court finds specific statutory mitigating or aggravating factors. The current presumptive terms were developed in the late 1970s to limit the discretion of judges because of a perceived need to achieve greater uniformity in sentencing. For the most part, the current terms adequately reflect the seriousness of offenses to the extent that they establish a presumptive lower limit on sentences, but it is no longer appropriate to continue to use the same presumptive term to also set the upper limit. The current presumptive term does not take into account the many different crimes within each class of offenses that come before the court. Therefore, this legislation provides judges in felony cases with the ability to weigh all relevant factors as they consider a range of sentences to impose. It also gives judges more authority to impose appropriate periods of probation.

Senate Bill 56 gives judges broader sentencing discretion in felony cases, by allowing them to consider all relevant circumstances in setting a sentence within the ranges established in the legislation. It gives judges broader authority to impose a period of probation supervision, which in some cases they are not able to do under current Alaska law, thus providing better

protection for the public and better assistance to the offender in reintegrating into the community.

For a judge to impose a sentence above the presumptive range, the state must comply with *Blakely v. Washington* and prove to a jury beyond a reasonable doubt the existence of certain statutory aggravating factors. Senate Bill 56 leaves it to the courts to develop procedures for presenting aggravating factors to the trial jury. In addition, because the rule in *Blakely* applies only at trial, the bill makes it clear that it is not necessary for the state to present aggravating factors to the grand jury.

Under this bill, a sentence cannot be reversed as excessive if it is imposed within a presumptive range or is required under consecutive sentencing legislation enacted last year. Over the last two decades the appellate courts in Alaska have developed a large body of case law that has resulted in *court-specified* "benchmark" sentences that often unnecessarily limit the discretion of sentencing judges. This bill replaces some of those court-imposed "benchmarks" in favor of legislatively enacted sentence ranges.

Senate Bill 56 also limits the ability of judges to impose "periodic" sentences, in which the judge allows the offender to periodically leave prison and then return to prison. This type of sentence significantly restricts the ability of prison officials to manage the prison population and to transfer prisoners so as to make the best and most efficient use of prison resources. To order "periodic" sentences is in essence allowing offenders to go on unsupervised furloughs. This is best left to prison officials, who can adopt equitable policies that take into account the specific security risks posed by each prisoner and the likely benefits of the furlough.

Senate Bill 56 also addresses the authority of probation/parole officers and police officers in connection with offenders released on probation or parole. Because it is nearly impossible for judges to anticipate every condition of probation that will be necessary during an offender's time under community supervision, this bill statutorily codifies the existing practice of judges delegating limited authority to probation officers.

Finally, Senate Bill 56 takes a practical approach to the supervision of persons on probation and parole, by giving police officers the explicit authority to detain or arrest offenders for certain types of violations of conditions imposed by the courts or the parole board. Under this bill, when a certified police officer has reasonable suspicion that a probationer or parolee is violating conditions, they can temporarily detain the person to investigate, and can arrest if there is probable cause that conditions were violated.



# Alaska State Legislature

Senate Majority Web: <http://www.akrepublicans.org>

Sponsor: Senator Gene Therriault, Senator Ralph Seekins  
Current Version: SB 56  
Contact: Heather Brakes, 465-4522

## Fact Sheet for: Senate Bill 56

Short Title: CRIMINAL LAW/PROCEDURE/SENTENCING

### Summary:

- Amends current presumptive sentencing, from a set term to a range of terms, to bring Alaska laws into conformity with requirements imposed by the federal constitution as a result of the *Blakely v. Washington* decision.
- Allows a probation officer to impose additional terms of release or supervision for offenders without further court proceeding.
- Allows for an additional aggravator when a defendant has prior criminal history of five or more class A misdemeanor convictions.
- Limits the ability of judges to order "periodic" sentences in which the offender periodically leaves prison and then returns to prison.
- Stipulates the authority of police officers to detain or arrest probationers and parolees for certain types of violations of conditions imposed by the courts or the parole board.

### Benefits:

#### Sentencing:

- Improves by giving judges more discretion.
- Simplifies.
- Removes current confusions in the aftermath of the *Blakely* decision.

#### Criminal Law and Procedure:

- Improves the supervision of offenders by clarifying that probation officers have the authority to impose additional terms.
- Allows Correctional Facilities to better manage the prison population and better supervise offenders by limiting the abuse of periodic sentencing.
- Improves public safety by clarifying that police officers have the authority to arrest violators of parole or probation.

### Background:

The Supreme Court ruled in June 2004 that, under the Sixth Amendment, a defendant has the right to have a jury—rather than the sentencing judge—determine whether aggravating circumstances exist to justify increasing a defendant's sentence above the statutorily-prescribed term. The *Blakely* decision has created confusion in the Alaska courts, and has affected Alaska differently than most other states. Alaska's presumptive sentencing system limits judicial discretion to a single, definite term. Therefore, to impose an appropriate sentence, or even to impose probation supervision, a judge must find specific aggravating factors. Most other states with similar systems provide the judge with a sentencing range that provides some measure of judicial discretion, and allows a judge to order probation supervision without making specific findings.

	First Felony	First Felony (special crimes)	Second Felony	Sex Felony with a prior sex felony	Third+ Felony	Sex Felony with two prior sex felonies	Max
<b>Unclassified Sex Offense</b>	(8) to 12	weapon or serious injury (10) <b>12 to 16</b>	(15) to 20	(20) to 30	(25) to 35	(30) to 40	(40)
<b>A Felony Sex Offense</b>	(5) to 8	weapon or serious injury (10) to 14	(10) <b>12 to 16</b>	(15) to 20	(15) to 25	(20) to 30	(30)
<b>A Felony</b>	(5) to 8	weapon, serious injury, or police victim (7) to 11	(10) to 14	n/a	(15) to 20	n/a	(20)
<b>B Felony Sex Offense</b>	(0, but 1 to 3 by court-made law) <b>2 to 4</b>	n/a	(5) to 8	(10) to 14	(10) to 14	(15) to 20	(20)
<b>B Felony</b>	(0, but 1 to 3 by court-made law) <b>1 to 3</b>	crim neg hom of child: (0, but 1 to 3 by court-made law) <b>2 to 4</b>	(4) to 7	n/a	(6) to 10	n/a	(10)
<b>C Felony Sex Offense</b>	(0) <b>1 to 2</b>	n/a	(2) to 5	(3) to 6	(3) to 6	(6) to 10	(10)
<b>C Felony</b>	(0) to 2	wanton waste or same-day by guide (1) to 2	(2) to 4	n/a	(3) to 5	n/a	(5)
Numbers in parentheses are the current "presumptive" terms and maximums							
Numbers in <b>bold</b> show the presumptive ranges in the bill							

## SECTIONAL ANALYSIS - SENATE BILL 56

*"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."*

**Section 1** makes it clear that an indictment is valid as long as it complies with all rules of court, even if it does not allege aggravating factors that may later have to be proven to a jury to justify a higher sentence. At the grand jury stage, the state may not be aware of all aggravating factors, and therefore it is unreasonable to expect the indictment to list them. The *Blakely* decision did not require indictments to list aggravating factors, and due process is satisfied as long as the defendant has adequate notice of the factors in advance of trial, which is set out in Section 21 of the bill.

**Section 2** limits the ability of judges to order "periodic" sentences, in which the offender periodically leaves prison and then returns to prison. This type of sentence significantly restricts the ability of prison officials to manage the prison population and to transfer prisoners so as to make the best and most efficient use of prison resources. Most judges are appropriately deferential to the difficulties faced by Alaska prison officials, but some judges use their ability to order "periodic" sentences to allow offenders to go on what amounts to judicially-ordered and unsupervised furloughs from prison. There is a proper place for prison furloughs, but that is best left to prison officials, who can adopt equitable policies that take into account the specific security risks posed by each prisoner and the likely benefits of the furlough. The original intent of "periodic" sentences was to allow defendants to, for example, maintain their employment during the week, and serve a sentence on weekends, or to be released for fishing season and returned to prison when the season is over. The bill thus explicitly limits periodic sentences for employment purposes when necessary to pay a fine or restitution. This bill does not interfere with the court's authority under AS 12.55.025(c) to postpone the beginning date for service of a sentence, which allows defendants to complete school or get their affairs in order before they enter prison.

**Section 3** is a technical amendment to remove a reference to a statute repealed by the bill.

**Sections 4 - 5** amend statutes that contain the phrases "presumptive term" or "presumptive sentence" and substitute or add the new concept of "presumptive range" that is adopted in this bill.

**Section 6** codifies current practice by giving judges the explicit authority to delegate a greater level of authority to probation officers in connection with offenders released on probation or parole. Under current statutes, the Alaska court of appeals has indicated that it is not clear if judges can allow probation officers to set additional conditions of probation without further proceedings in court, and this bill gives judges that authority.

**Section 7** makes it clear that the higher courts in Alaska cannot reverse a sentence as excessive if a judge imposes a sentence within a statutory range specified in this bill, or imposes a consecutive sentence required by law.

**Sections 8 - 12** change the existing presumptive terms into presumptive ranges, and create ranges where no presumptive term previously existed. The best way to understand these sections is to refer to the chart attached to this sectional analysis. The numbers in parentheses show the existing presumptive term, and the numbers in bold show the range adopted by the bill. In general, the lower the presumptive term in existing law, the narrower the range adopted by this bill. Thus, with only minor exceptions, if the existing presumptive term is zero, one or two years, the bill adopts a range of two years. With presumptive terms of three, four or five years, the bill adopts a range of three years. With presumptive terms of six, seven, eight or ten years, the bill adopts a range of four years. Higher presumptive terms result in ranges of five or ten years.

**Section 13** requires that, in the absence of aggravating or mitigating factors, the total term of imprisonment must fall within the range and the active term of imprisonment (the time actually served in prison) must also fall within the range. Thus, if the range is five to eight years, the judge could impose a sentence of eight years with three years suspended, thus the total sentence (eight years) is within the range, and the active term (eight minus three suspended = five years) is also within the range. However, the judge could not impose a sentence of ten years with three suspended because the total sentence is above the range, nor could the judge impose eight years with four suspended because the active term is below the range.

**Section 14** defines the phrase "presumptive term" for purposes of the consecutive sentencing statute, as the middle of the presumptive range. This phrase is used in the consecutive sentencing statute to mandate certain amounts of consecutive sentences for convictions relating to multiple victims or multiple offenses.

**Section 15** is a conforming technical amendment.

**Section 16** specifies that aggravating or mitigating factors allow judges to impose a sentence outside of the presumptive ranges, and specifies the allowable amount of that adjustment.

**Sections 17-19** contain conforming amendments to account for the change in terminology from presumptive "term" to presumptive "range."

**Section 18** also adds one aggravating factor that allows judges to impose an aggravated sentence if the offender has a long misdemeanor record, specified as five or more convictions for class A misdemeanor crimes. By requiring convictions for class A misdemeanors, the aggravating factor would not be triggered by convictions for many petty offenses such as disorderly conduct

and harassment, which are class B misdemeanors, not by violations such as minor consuming and traffic offenses.

**Section 20** specifies that, as in current law, aggravating and mitigating factors that are part of the elements of the offense cannot also be used to justify a sentence outside of the applicable range.

**Section 21** conforms Alaska law to the Supreme Court's *Blakely* decision. There are a small number of aggravating factors that are not required under *Blakely* to be proven to a jury beyond a reasonable doubt, and those are specified in proposed AS 12.55.155(f)(1). Those factors must, however, be found by a judge by clear and convincing evidence, as under current law. Proposed AS 12.55.155(f)(2) requires, for all other aggravating factors, that in order to justify a sentence above the presumptive range, a jury must find the existence of that factor beyond a reasonable doubt. This provision also specifies when the state must provide the defendant with notice that it intends to establish one of these aggravating factors.

**Sections 22 - 25** relate to the "safety net" that allows a three-judge panel to approve sentences outside of the ranges. These sections make no change in existing law, but contain conforming amendments to account for the change in terminology from presumptive "term" to presumptive "range."

**Sections 26, 30 and 31** give police officers the explicit authority to detain or arrest these probationers and parolees for certain types of violations of conditions imposed by the courts or the parole board. Under this bill, when a certified police officer has reasonable suspicion that a probationer or parolee is violating certain specified conditions, they can temporarily detain the person to investigate, and can arrest if there is probable cause that conditions were violated.

**Section 27** is a conforming amendment to account for the change in terminology from presumptive "term" to presumptive "range."

**Section 28** amends the parole eligibility statute to take into account the change in terminology from presumptive "term" to presumptive "range," and to re-organize the eligibility criteria to make the provisions more understandable and to statutorily adopt certain provisions that exist in parole board administrative regulations.

**Section 29** makes it clear that if the parole board has already considered a prisoner for discretionary parole release, and has denied release, the board has the authority to also deny a prisoner further consideration for parole. The state's position is that the parole board already has this authority inherent in its discretion to consider prisoners for parole release. However, because the authority is not explicit, the question is often litigated by *pro se* prisoners.

24-LS0308\1  
Luckhaupt  
1/19/05

**CS FOR SENATE BILL NO. 56( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATORS THERRIAULT, Seekins**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to criminal law and procedure, criminal sentences, and probation and**  
2 **parole; and providing for an effective date."**

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

4 **\* Section 1.** AS 12.40.100 is amended by adding a new subsection to read:

5 (c) An indictment that complies with this section and with applicable rules  
6 adopted by the supreme court, is valid and need not specify aggravating factors set out  
7 in AS 12.55.155.

8 **\* Sec. 2.** AS 12.55.015(a) is amended to read:

9 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing  
10 sentence on a defendant convicted of an offense, may singly or in combination

11 (1) impose a

12 (A) fine when authorized by law and as provided in  
13 AS 12.55.035; or

14 (B) day fine when authorized by law and as provided in

1 AS 12.55.036 if the court does not impose a term of periodic or continuous  
2 imprisonment or place the defendant on probation;

3 (2) order the defendant to be placed on probation under conditions  
4 specified by the court that may include provision for active supervision;

5 (3) impose a definite term of periodic imprisonment, but only if an  
6 employment obligation of the defendant preexisted sentencing and the defendant  
7 receives a composite sentence of less than two years to serve; *and #5*

8 (4) impose a definite term of continuous imprisonment;

9 (5) order the defendant to make restitution under AS 12.55.045;

10 (6) order the defendant to carry out a continuous or periodic program  
11 of community work under AS 12.55.055;

12 (7) suspend execution of all or a portion of the sentence imposed under  
13 AS 12.55.080;

14 (8) suspend imposition of sentence under AS 12.55.085;

15 (9) order the forfeiture to the commissioner of public safety or a  
16 municipal law enforcement agency of a deadly weapon that was in the actual  
17 possession of or used by the defendant during the commission of an offense described  
18 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

19 (10) order the defendant, while incarcerated, to participate in or  
20 comply with the treatment plan of a rehabilitation program that is related to the  
21 defendant's offense or to the defendant's rehabilitation if the program is made available  
22 to the defendant by the Department of Corrections;

23 (11) order the forfeiture to the state of a motor vehicle, weapon,  
24 electronic communication device, or money or other valuables, used in or obtained  
25 through an offense that was committed for the benefit of, at the direction of, or in  
26 association with a criminal street gang;

27 (12) order the defendant to have no contact, either directly or  
28 indirectly, with a victim or witness of the offense until the defendant is  
29 unconditionally discharged.

30 \* Sec. 3. AS 12.55.025(i) is amended to read:

31 (i) Except as provided by AS 12.55.125(a)(3), [12.55.125(k),] 12.55.145(d),

1 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof  
2 applies to sentencing proceedings.

3 \* Sec. 4. AS 12.55.055(d) is amended to read:

4 (d) The court may offer a defendant convicted of an offense the option of  
5 performing community work in lieu of a sentence of imprisonment. Substitution of  
6 community work shall be at a rate of eight hours for each day of imprisonment. A  
7 court may not offer substitution of community work for any mandatory minimum  
8 period of imprisonment or for any period within the [OF A] presumptive range  
9 [TERM] of imprisonment for the offense.

10 \* Sec. 5. AS 12.55.088(c) is amended to read:

11 (c) A [NO] sentence may not be reduced or modified so as to result in a term  
12 of imprisonment that [WHICH] is less than the minimum [OR PRESUMPTIVE]  
13 sentence or lower than the presumptive range required by law for the original  
14 sentence.

15 \* Sec. 6. AS 12.55.100(a) is amended to read:

16 (a) While on probation and among the conditions of probation, the defendant  
17 may be required

18 (1) to pay a fine in one or several sums;

19 (2) to make restitution or reparation to aggrieved parties for actual  
20 damages or loss caused by the crime for which conviction was had, including  
21 compensation to a victim that is a nonprofit organization for the value of labor or  
22 goods provided by volunteers if the labor or goods were necessary to alleviate or  
23 mitigate the effects of the defendant's crime;

24 (3) to provide for the support of any persons for whose support the  
25 defendant is legally responsible;

26 (4) to perform community work in accordance with AS 12.55.055;

27 (5) to participate in or comply with the treatment plan of an inpatient  
28 or outpatient rehabilitation program specified by either the court or the defendant's  
29 probation officer that is related to the defendant's offense or to the defendant's  
30 rehabilitation; [AND]

31 (6) to satisfy the screening, evaluation, referral, and program

1 requirements of an agency authorized by the court to make referrals for rehabilitative  
2 treatment or to provide rehabilitative treatment; and

3 (7) if ordered by the court, to abide by additional conditions of  
4 probation imposed by the defendant's probation officer; an additional condition  
5 imposed by the probation officer must be provided orally and in writing to the  
6 defendant; the additional condition is binding upon delivery until modified by the  
7 court; this paragraph does not require written notice of conditions relating to the  
8 day-to-day management of probationers, in which probation officers direct the  
9 activities of probationers to implement existing court-imposed conditions.

10 \* Sec. 7. AS 12.55.120 is amended by adding a new subsection to read:

11 (e) A sentence reviewed by the appellate court under this section and  
12 AS 22.07.020, or by the superior court under AS 22.10.020, or a sentence reviewed by  
13 petition accepted under court rules, may not be reversed as excessive, and the  
14 sentencing court is not required to make specific findings, if the sentence is within an  
15 applicable presumptive range set out in AS 12.55.125, or is a consecutive or partially  
16 consecutive sentence imposed in accordance with the minimum sentences set out in  
17 AS 12.55.127.

18 \* Sec. 8. AS 12.55.125(c) is amended to read:

19 (c) Except as provided in (i) of this section, a defendant convicted of a class A  
20 felony may be sentenced to a definite term of imprisonment of not more than 20 years,  
21 and shall be sentenced to a definite term within the following presumptive ranges  
22 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

23 (1) if the offense is a first felony conviction and does not involve  
24 circumstances described in (2) of this subsection, five to eight [FIVE] years;

25 (2) if the offense is a first felony conviction

26 [(A) OTHER THAN FOR MANSLAUGHTER] and the  
27 defendant possessed a firearm, used a dangerous instrument, or caused serious  
28 physical injury or death during the commission of the offense, or knowingly  
29 directed the conduct constituting the offense at a uniformed or otherwise  
30 clearly identified peace officer, fire fighter, correctional employee, emergency  
31 medical technician, paramedic, ambulance attendant, or other emergency

1 responder who was engaged in the performance of official duties at the time of  
2 the offense, seven to 11 [SEVEN] years;

3 [(B) FOR MANSLAUGHTER AND THE CONDUCT  
4 RESULTING IN THE CONVICTION WAS KNOWINGLY DIRECTED  
5 TOWARDS A CHILD UNDER THE AGE OF 16, SEVEN YEARS;

6 (C) FOR MANSLAUGHTER AND THE CONDUCT  
7 RESULTING IN THE CONVICTION INVOLVED DRIVING WHILE  
8 UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE,  
9 INHALANT, OR CONTROLLED SUBSTANCE, SEVEN YEARS;]

10 (3) if the offense is a second felony conviction, 10 to 14 [10] 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, 15 to 20 [15] years.

13 \* Sec. 9. AS 12.55.125(d) is amended to read:

14 (d) Except as provided in (i) of this section, a defendant convicted of a class B  
15 felony may be sentenced to a definite term of imprisonment of not more than 10 years,  
16 and shall be sentenced to a definite term within the following presumptive ranges  
17 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

20 (2) if the offense is a first felony conviction, the defendant violated  
21 AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

22 (3) if the offense is a second felony conviction, four to seven [FOUR]  
23 years;

24 (4) [(2)] if the offense is a third felony conviction, six to 10 [SIX]  
25 years.

26 \* Sec. 10. AS 12.55.125(e) is amended to read:

27 (e) Except as provided in (i) of this section, a defendant convicted of a class C  
28 felony may be sentenced to a definite term of imprisonment of not more than five  
29 years, and shall be sentenced to a definite term within the following presumptive  
30 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

circumstances described in (4) of this subsection, zero to two years;

(2) if the offense is a second felony conviction, two to four [TWO] years;

(3) [(2)] if the offense is a third felony conviction, three to five [THREE] years;

(4) [(3)] if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years [ONE YEAR].

\* Sec. 11. AS 12.55.125(g) is amended to read:

(g) If a defendant is sentenced under (c), (d), (e) [(d)(1), (d)(2), (e)(1), (e)(2), (e)(3)], or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

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

(3) terms of imprisonment may not be otherwise reduced.

\* Sec. 12. AS 12.55.125(i) is amended to read:

(i) A defendant convicted of

(1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to a definite term within the following presumptive ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, eight to 12 [EIGHT] years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 12 to 16 [10] years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 15 to 20 [15] years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 20 to 30 [20] years;

(E) if the offense is a third felony conviction and the defendant

1 is not subject to sentencing under (F) of this paragraph or (I) of this section, 25  
2 to 35 [25] years;

3 (F) if the offense is a third felony conviction, the defendant is  
4 not subject to sentencing under (I) of this section, and the defendant has two  
5 prior convictions for sexual felonies, 30 to 40 [30] years;

6 (2) attempt, conspiracy, or solicitation to commit sexual assault in the  
7 first degree or sexual abuse of a minor in the first degree may be sentenced to a  
8 definite term of imprisonment of not more than 30 years and shall be sentenced to a  
9 definite term within the following presumptive ranges [TERMS], subject to  
10 adjustment as provided in AS 12.55.155 - 12.55.175:

11 (A) if the offense is a first felony conviction and does not  
12 involve circumstances described in (B) of this paragraph, five to eight [FIVE]  
13 years;

14 (B) if the offense is a first felony conviction, and the defendant  
15 possessed a firearm, used a dangerous instrument, or caused serious physical  
16 injury during the commission of the offense, 10 to 14 [10] years;

17 (C) if the offense is a second felony conviction and does not  
18 involve circumstances described in (D) of this paragraph, 12 to 16 [10] years;

19 (D) if the offense is a second felony conviction and the  
20 defendant has a prior conviction for a sexual felony, 15 to 20 [15] years;

21 (E) if the offense is a third felony conviction, does not involve  
22 circumstances described in (F) of this paragraph, and the defendant is not  
23 subject to sentencing under (I) of this section, 15 to 25 [15] years;

24 (F) if the offense is a third felony conviction, the defendant is  
25 not subject to sentencing under (I) of this section, and the defendant has two  
26 prior convictions for sexual felonies, 20 to 30 [20] years;

27 (3) sexual assault in the second degree, sexual abuse of a minor in the  
28 second degree, unlawful exploitation of a minor, or distribution of child pornography  
29 may be sentenced to a definite term of imprisonment of not more than 20 years and  
30 shall be sentenced to a definite term within the following presumptive ranges  
31 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

1 (A) if the offense is a first felony conviction, two to four  
2 years;

3 (B) if the offense is a second felony conviction and does not  
4 involve circumstances described in (C) [(B)] of this paragraph, five to eight  
5 [FIVE] years;

6 (C) [(B)] if the offense is a second felony conviction and the  
7 defendant has a prior conviction for a sexual felony, 10 to 14 [10] years;

8 (D) [(C)] if the offense is a third felony conviction, does not  
9 involve circumstances described in (E) [(D)] of this paragraph, 10 to 14 [10]  
10 years;

11 (E) [(D)] if the offense is a third felony conviction, and the  
12 defendant has two prior convictions for sexual felonies, 15 to 20 [15] years;

13 (4) sexual assault in the third degree, incest, indecent exposure in the  
14 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to  
15 commit sexual assault in the second degree, sexual abuse of a minor in the second  
16 degree, unlawful exploitation of a minor, or distribution of child pornography, may be  
17 sentenced to a definite term of imprisonment of not more than 10 years and shall be  
18 sentenced to a definite term within the following presumptive ranges [TERMS],  
19 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

20 (A) if the offense is a first felony conviction, one to two  
21 years;

22 (B) if the offense is a second felony conviction and does not  
23 involve circumstances described in (C) [(B)] of this paragraph, two to five  
24 [TWO] years;

25 (C) [(B)] if the offense is a second felony conviction and the  
26 defendant has a prior conviction for a sexual felony, three to six [THREE]  
27 years;

28 (D) [(C)] if the offense is a third felony conviction and does not  
29 involve circumstances described in (E) [(D)] of this paragraph, three to six  
30 [THREE] years;

31 (E) [(D)] if the offense is a third felony conviction and the

1 defendant has two prior convictions for sexual felonies, six to 10 [SIX] years.

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

3 (n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i)  
4 of this section, the total term, made up of the active term of imprisonment plus any  
5 suspended term of imprisonment, must fall within the presumptive range, and the  
6 active term of imprisonment may not fall below the lower end of the presumptive  
7 range.

8 \* Sec. 14. AS 12.55.127(d) is amended by adding a new paragraph to read:

9 (4) "presumptive term" means the middle of the applicable  
10 presumptive range set out in AS 12.55.125.

11 \* Sec. 15. AS 12.55.145(a) is amended to read:

12 (a) For purposes of considering prior convictions in imposing sentence under

13 (1) AS 12.55.125(c), (d), or (e) [(d)(1), (d)(2), (e)(1), OR (e)(?)],

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

18 (B) a conviction in this or another jurisdiction of an offense  
19 having elements similar to those of a felony defined as such under Alaska law  
20 at the time the offense was committed is considered a prior felony conviction;

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

28 (2) AS 12.55.125(f),

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

1 (B) commission of and conviction for offenses relied on as  
2 prior most serious felony offenses must occur in the following order:  
3 conviction for the first offense must occur before commission of the second  
4 offense, and conviction for the second offense must occur before commission  
5 of the offense for which the defendant is being sentenced;

6 (3) AS 12.55.135(g),

7 (A) a prior conviction may not be considered if a period of five  
8 or more years has elapsed between the date of the defendant's unconditional  
9 discharge on the immediately preceding offense and commission of the present  
10 offense unless the prior conviction was for an unclassified or class A felony;

11 (B) a conviction in this or another jurisdiction of an offense  
12 having elements similar to those of a crime against a person or a crime  
13 involving domestic violence is considered a prior conviction;

14 (C) two or more convictions arising out of a single, continuous  
15 criminal episode during which there was no substantial change in the nature of  
16 the criminal objective are considered a single conviction unless the defendant  
17 was sentenced to consecutive sentences for the crimes; offenses committed  
18 while attempting to escape or avoid detection or apprehension after the  
19 commission of another offense are not part of the same criminal episode or  
20 objective;

21 (4) AS 12.55.125(i),

22 (A) a conviction in this or another jurisdiction of an offense  
23 having elements similar to those of a sexual felony is a prior conviction for a  
24 sexual felony;

25 (B) a felony conviction in another jurisdiction making it a  
26 crime to commit any lewd and lascivious act upon a child under the age of 16  
27 years, with the intent of arousing, appealing to, or gratifying the sexual desires  
28 of the defendant or the victim is a prior conviction for a sexual felony;

29 (C) two or more convictions arising out of a single, continuous  
30 criminal episode during which there was no substantial change in the nature of  
31 the criminal objective are considered a single conviction unless the defendant

1 was sentenced to consecutive sentences for the crimes; offenses committed  
2 while attempting to escape or avoid detection or apprehension after the  
3 commission of another offense are not part of the same criminal episode or  
4 objective.

5 \* Sec. 16. AS 12.55.155(a) is amended to read:

6 (a) Except as provided in (e) of this section, if [IF] a defendant is convicted  
7 of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i)  
8 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and

9 (1) the low end of the presumptive range [TERM] is four years or  
10 less, the court may impose any sentence below the presumptive range [DECREASE  
11 THE PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS THE  
12 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of  
13 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
14 for factors in aggravation;

15 (2) the low end of the presumptive range [TERM OF  
16 IMPRISONMENT] is more than four years, the court may impose a sentence below  
17 the presumptive range as long as the active term of imprisonment is not less than  
18 50 percent of the low end of the presumptive range [DECREASE THE  
19 PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS 50 PERCENT OF THE  
20 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of  
21 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
22 for factors in aggravation.

23 \* Sec. 17. AS 12.55.155(b) is amended to read:

24 (b) Sentences [SENTENCE INCREMENTS AND DECREMENTS] under  
25 this section that are outside of the presumptive ranges set out in AS 12.55.125  
26 shall be based on the totality of the aggravating and mitigating factors set out in (c)  
27 and (d) of this section.

28 \* Sec. 18. AS 12.55.155(c) is amended to read:

29 (c) The following factors shall be considered by the sentencing court if  
30 proven in accordance with this section, and may allow imposition of a sentence  
31 above the presumptive range [AND MAY AGGRAVATE THE PRESUMPTIVE

1 TERMS] set out in AS 12.55.125:

2 (1) a person, other than an accomplice, sustained physical injury as a  
3 direct result of the defendant's conduct;

4 (2) the defendant's conduct during the commission of the offense  
5 manifested deliberate cruelty to another person;

6 (3) the defendant was the leader of a group of three or more persons  
7 who participated in the offense;

8 (4) the defendant employed a dangerous instrument in furtherance of  
9 the offense;

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

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

16 (7) a prior felony conviction considered for the purpose of invoking a  
17 [THE] presumptive range under [TERMS OF] this chapter was of a more serious  
18 class of offense than the present offense;

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

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

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

24 (11) the defendant committed the offense under [PURSUANT TO] an  
25 agreement that the defendant either pay or be paid for the commission of the offense,  
26 and the pecuniary incentive was beyond that inherent in the offense itself;

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

30 (13) the defendant knowingly directed the conduct constituting the  
31 offense at an active officer of the court or at an active or former judicial officer,

1 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,  
2 emergency medical technician, paramedic, ambulance attendant, or other emergency  
3 responder during or because of the exercise of official duties;

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

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

8 (16) the defendant's criminal conduct was designed to obtain  
9 substantial pecuniary gain and the risk of prosecution and punishment for the conduct  
10 is slight;

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

14 (18) the offense was a felony

15 (A) specified in AS 11.41 and was committed against a spouse,  
16 a former spouse, or a member of the social unit made up of [COMPRISED  
17 OF] those living together in the same dwelling as the defendant;

18 (B) specified in AS 11.41.410 - 11.41.458 and the defendant  
19 has engaged in the same or other conduct prohibited by a provision of  
20 AS 11.41.410 - 11.41.460 involving the same or another victim; or

21 (C) specified in AS 11.41 that is a crime involving domestic  
22 violence and was committed in the physical presence or hearing of a child  
23 under 16 years of age who was, at the time of the offense, living within the  
24 residence of the victim, the residence of the perpetrator, or the residence where  
25 the crime involving domestic violence occurred;

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

28 (20) the defendant was on furlough under AS 33.30 or on parole or  
29 probation for another felony charge or conviction that would be considered a prior  
30 felony conviction under AS 12.55.145(a)(1)(B);

31 (21) the defendant has a criminal history of repeated instances of

1 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,  
2 similar in nature to the offense for which the defendant is being sentenced under this  
3 section;

4 (22) the defendant knowingly directed the conduct constituting the  
5 offense at a victim because of that person's race, sex, color, creed, physical or mental  
6 disability, ancestry, or national origin;

7 (23) the defendant is convicted of an offense specified in AS 11.71 and

8 (A) the offense involved the delivery of a controlled substance  
9 under circumstances manifesting an intent to distribute the substance as part of  
10 a commercial enterprise; or

11 (B) at the time of the conduct resulting in the conviction, the  
12 defendant was caring for or assisting in the care of a child under 10 years of  
13 age;

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

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

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

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

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

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

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

30 (29) the defendant committed the offense for the benefit of, at the  
31 direction of, or in association with a criminal street gang;

1 (30) the defendant is convicted of an offense specified in AS 11.41.410  
2 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
3 the victim in furtherance of the offense with the intent to make the victim  
4 incapacitated; in this paragraph, "incapacitated" has the meaning given in  
5 AS 11.41.470;

6 (31) the defendant's prior criminal history includes convictions for  
7 five or more crimes in this or another jurisdiction that are class A misdemeanors  
8 under the law of this state, or having elements similar to a class A misdemeanor;  
9 two or more convictions arising out of a single continuous episode are considered  
10 a single conviction; however, an offense is not a part of a continuous episode if  
11 committed while attempting to escape or resist arrest or if it is an assault upon a  
12 uniformed or otherwise clearly identified peace officer; notice and denial of  
13 convictions are governed by AS 12.55.145(b), (c), and (d).

14 \* Sec. 19. AS 12.55.155(d) is amended to read:

15 (d) The following factors shall be considered by the sentencing court if  
16 proven in accordance with this section, and may allow imposition of a sentence  
17 below the presumptive range [AND MAY MITIGATE THE PRESUMPTIVE  
18 TERMS] set out in AS 12.55.125:

19 (1) the offense was principally accomplished by another person, and  
20 the defendant manifested extreme caution or sincere concern for the safety or well-  
21 being of the victim;

22 (2) the defendant, although an accomplice, played only a minor role in  
23 the commission of the offense;

24 (3) the defendant committed the offense under some degree of duress,  
25 coercion, threat, or compulsion insufficient to constitute a complete defense, but that  
26 [WHICH] significantly affected the defendant's conduct;

27 (4) the conduct of a youthful defendant was substantially influenced by  
28 another person more mature than the defendant;

29 (5) the conduct of an aged defendant was substantially a product of  
30 physical or mental infirmities resulting from the defendant's age;

31 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the

1 defendant acted with serious provocation from the victim;

2 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,  
3 the victim provoked the crime to a significant degree;

4 (8) [REPEALED

5 (9)] the conduct constituting the offense was among the least serious  
6 conduct included in the definition of the offense;

7 (9) [(10)] before the defendant knew that the criminal conduct had  
8 been discovered, the defendant fully compensated or made a good faith effort to fully  
9 compensate the victim of the defendant's criminal conduct for any damage or injury  
10 sustained;

11 (10) [(11)] the defendant was motivated to commit the offense solely  
12 by an overwhelming compulsion to provide for emergency necessities for the  
13 defendant's immediate family;

14 (11) [(12)] the defendant assisted authorities to detect, apprehend, or  
15 prosecute other persons who committed an offense;

16 (12) [(13)] the facts surrounding the commission of the offense and  
17 any previous offenses by the defendant establish that the harm caused by the  
18 defendant's conduct is consistently minor and inconsistent with the imposition of a  
19 substantial period of imprisonment;

20 (13) [(14)] the defendant is convicted of an offense specified in  
21 AS 11.71 and the offense involved small quantities of a controlled substance;

22 (14) [(15)] the defendant is convicted of an offense specified in  
23 AS 11.71 and the offense involved the distribution of a controlled substance, other  
24 than a schedule IA controlled substance, to a personal acquaintance who is 19 years of  
25 age or older for no profit;

26 (15) [(16)] the defendant is convicted of an offense specified in  
27 AS 11.71 and the offense involved the possession of a small amount of a controlled  
28 substance for personal use in the defendant's home;

29 (16) [(17)] in a conviction for assault or attempted assault or for  
30 homicide or attempted homicide, the defendant acted in response to domestic violence  
31 perpetrated by the victim against the defendant and the domestic violence consisted of

1 aggravated or repeated instances of assaultive behavior.

2 \* Sec. 20. AS 12.55.155(e) is amended to read:

3 (e) If a factor in aggravation is a necessary element of the present offense, or  
4 requires the imposition of a sentence within the presumptive range [TERM] under  
5 AS 12.55.125(c)(2), that factor may not be used to impose a sentence above the high  
6 end of [AGGRAVATE] the presumptive range [TERM]. If a factor in mitigation is  
7 raised at trial as a defense reducing the offense charged to a lesser included offense,  
8 that factor may not be used to impose a sentence below the low end of [MITIGATE]  
9 the presumptive range [TERM].

10 \* Sec. 21. AS 12.55.155(f) is amended to read:

11 (f) If the state seeks to establish a factor in aggravation at sentencing

12 (1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this  
13 section, or if the defendant seeks to establish a factor in mitigation at sentencing,  
14 written notice must be served on the opposing party and filed with the court not later  
15 than 10 days before the date set for imposition of sentence; the factors [. FACTORS]  
16 in aggravation listed in this paragraph, and factors in mitigation must be established  
17 by clear and convincing evidence before the court sitting without a jury; all [. ALL]  
18 findings must be set out with specificity;

19 (2) other than one listed in (1) of this subsection, the factor shall be  
20 presented to a trial jury under procedures set by the court, unless the defendant  
21 waives trial by jury, stipulates to the existence of the factor, or consents to have  
22 the factor proven under procedures set out in (1) of this subsection; a factor in  
23 aggravation presented to a jury is established if proved beyond a reasonable  
24 doubt; written notice of the intent to establish a factor in aggravation must be  
25 served on the defendant and filed with the court

26 (A) 10 days before trial, or at another time specified by the  
27 court;

28 (B) within 48 hours, or at a time specified by the court, if  
29 the court instructs the jury about the option to return a verdict for a lesser  
30 included offense; or

31 (C) five days before entering a plea that results in a finding

of guilt, or at another time specified by the court.

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

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of a sentence within the presumptive range [TERM], whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

\* Sec. 23. AS 12.55.175(b) is amended to read:

(b) Upon receipt of a record of proceedings under AS 12.55.165, the three-judge panel shall consider all pertinent files, records, and transcripts, including the findings and conclusions of the judge who originally heard the matter. The panel may hear oral testimony to supplement the record before it. If the panel supplements the record, the panel shall permit the victim to testify before the panel. If the panel finds that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of a sentence within the presumptive range [TERM], whether or not adjusted for aggravating or mitigating factors, it shall sentence the defendant in accordance with this section. If the panel does not find that manifest injustice would result, it shall remand the case to the sentencing court, with a written statement of its findings and conclusions, for sentencing under AS 12.55.125.

\* Sec. 24. AS 12.55.175(e) is amended to read:

(e) If the three-judge panel determines under (b) of this section that manifest injustice would result from imposition of a sentence within the presumptive range [TERM] and the panel also finds that the defendant has an exceptional potential for rehabilitation and that a sentence of less than the presumptive range [TERM] should be imposed because of the defendant's exceptional potential for rehabilitation, the panel

(1) shall sentence the defendant within [TO] the presumptive range

1 [TERM] required under AS 12.55.125 or as permitted under AS 12.55.155:

2 (2) shall order the defendant under AS 12.55.015 to engage in  
3 appropriate programs of rehabilitation; and

4 (3) may provide that the defendant is eligible for discretionary parole  
5 under AS 33.16.090 during the second half of the sentence imposed under this  
6 subsection if the defendant successfully completes all rehabilitation programs ordered  
7 under (2) of this subsection.

8 \* Sec. 25. AS 12.55.185 is amended by adding a new paragraph to read:

9 (18) "active term of imprisonment" has the meaning given in  
10 AS 12.55.127.

11 \* Sec. 26. AS 33.05.070 is amended by adding new subsections to read:

12 (c) At any time within the probation period, a police officer certified by the  
13 Alaska Police Standards Council may detain a probationer if the police officer has  
14 reasonable suspicion that the probationer has recently violated or may imminently  
15 violate a probation condition relating to one of the topics set out in (d) of this section.  
16 The police officer may also arrest the probationer without a warrant if the police  
17 officer has probable cause to believe that the probationer has violated a probation  
18 condition relating to one of the topics set out in (d) of this section.

19 (d) The conditions that permit a police officer to detain or arrest a probationer  
20 or parolee without a warrant under AS 33.16.240 and (c) of this section are those  
21 conditions imposed by the court, or the parole board, relating to

22 (1) geographic limitations on the probationer's movements;

23 (2) possessing or consuming controlled substances under state or  
24 federal law;

25 (3) possessing firearms;

26 (4) possessing or consuming alcoholic beverages, or being in a place  
27 where they are sold or served;

28 (5) operating or driving a motor vehicle; or

29 (6) other conduct that creates an imminent public danger or threatens  
30 serious harm to persons or property.

31 \* Sec. 27. AS 33.16.085(a) is amended to read:

1 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term  
2 or sentence a prisoner may be serving or any restriction on parole eligibility under  
3 AS 12.55, a prisoner who is serving a term of at least 181 days, may, upon application  
4 by the prisoner or the commissioner, be released by the board on special medical  
5 parole if the board determines that

6 (1) the prisoner has not been convicted of an offense under  
7 AS 11.41.410 - 11.41.425 or 11.41.434 - 11.41.438 and the prisoner is severely  
8 medically or cognitively disabled as certified in writing by a physician licensed under  
9 AS 08.64

10 (2) a reasonable probability exists that

11 (A) the prisoner will live and remain at liberty without  
12 violating any laws or conditions imposed by the board;

13 (B) because of the prisoner's severe medical or cognitive  
14 disability, the prisoner will not pose a threat of harm to the public if released  
15 on parole; and

16 (C) release of the prisoner on parole would not diminish the  
17 seriousness of the crime;

18 (3) the prisoner

19 (A) was not suffering from the severe medical or cognitive  
20 disability at the time the prisoner committed the offense or parole or probation  
21 violation for which the prisoner is presently incarcerated; or

22 (B) was suffering from the severe medical or cognitive  
23 disability at the time the prisoner committed the offense or parole or probation  
24 violation for which the prisoner is presently incarcerated and the medical or  
25 cognitive disability has progressed so that the likelihood of the prisoner's  
26 committing the same or a similar offense is low;

27 (4) the care and supervision that the prisoner requires can be provided  
28 in a more medically appropriate or cost-effective manner than by the department;

29 (5) the prisoner is incapacitated to an extent that incarceration does not  
30 impose significant additional restrictions on the prisoner;

31 (6) the prisoner is likely to remain subject to the severe medical or

1 cognitive disability throughout the entire period of parole or to die and there is no  
2 reasonable expectation that the prisoner's medical or cognitive disability will improve  
3 noticeably; and

4 (7) an appropriate discharge plan has been formulated that addresses  
5 basic life domains of the prisoner, including care coordination, housing, eligibility for  
6 public benefits, and health care, including necessary medication.

7 \* Sec. 28. AS 33.16.090 is repealed and reenacted to read:

8 **Sec. 33.16.090. Eligibility for discretionary parole and minimum terms to**  
9 **be served.** (a) A prisoner sentenced to an active term of imprisonment of at least 181  
10 days may, in the discretion of the board, be released on discretionary parole if the  
11 prisoner has served the amount of time specified under (b) of this section, except that

12 (1) a prisoner sentenced to one or more mandatory 99-year terms under  
13 AS 12.55.125(a) or one or more definite terms under AS 12.55.125(l) is not eligible  
14 for consideration for discretionary parole;

15 (2) a prisoner is not eligible for consideration of discretionary parole if  
16 made ineligible by order of a court under AS 12.55.115;

17 (3) a prisoner imprisoned under AS 12.55.086 is not eligible for  
18 discretionary parole unless the actual term of imprisonment is more than one year.

19 (b) A prisoner eligible under (a) of this section who is sentenced

20 (1) to a single sentence under AS 12.55.125(a) or (b) may not be  
21 released on discretionary parole until the prisoner has served the mandatory minimum  
22 term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment  
23 imposed, or any term set under AS 12.55.115, whichever is greatest;

24 (2) to a single sentence within or below a presumptive range set out in  
25 AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i), and has not been allowed by the  
26 three-judge panel under AS 12.55.175 to be considered for discretionary parole  
27 release, may not be released on discretionary parole until the prisoner has served the  
28 term imposed, less good time earned under AS 33.20.010;

29 (3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and  
30 (4), or (i), and has been allowed by the three-judge panel under AS 12.55.175 to be  
31 considered for discretionary parole release during the second half of the sentence, may

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not be released on discretionary parole until

(A) the prisoner has served that portion of the active term of imprisonment required by the three-judge panel; and

(B) in addition to the factors set out in AS 33.16.100(a), the board determines that

(i) the defendant has successfully completed all rehabilitation programs ordered by the three-judge panel that were made available to the prisoner; and

(ii) the prisoner would not constitute a danger to the public if released on parole;

(4) to a single enhanced sentence under AS 12.55.155(a) that is above the applicable presumptive range, may not be released on discretionary parole until the prisoner has served the greater of the following:

(A) an amount of time, less good time earned under AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth of the amount of time above the presumptive range; or

(B) any term set under AS 12.55.115;

(5) to a single sentence under any other provision of law, may not be released on discretionary parole until the prisoner has served at least one-fourth of the active term of imprisonment, any mandatory minimum sentence imposed under any provision of law, or any term set under AS 12.55.115, whichever is greatest;

(6) to concurrent sentences, may not be released on discretionary parole until the prisoner has served the greatest of

(A) any mandatory minimum sentence or sentences imposed under any provision of law;

(B) any term set under AS 12.55.115; or

(C) the amount of time that is required to be served under (1) - (5) of this subsection for the sentence imposed for the primary crime, had that been the only sentence imposed;

(7) to consecutive or partially consecutive sentences, may not be released on discretionary parole until the prisoner has served the greatest of

1 (A) the composite total of any mandatory minimum sentence or  
2 sentences imposed under any provision of law, including AS 12.55.127;

3 (B) any term set under AS 12.55.115; or

4 (C) the amount of time that is required to be served under (1) -  
5 (5) of this subsection for the sentence imposed for the primary crime, had that  
6 been the only sentence imposed, plus one-quarter of the composite total of the  
7 active term of imprisonment imposed as consecutive or partially consecutive  
8 sentences imposed for all crimes other than the primary crime.

9 (c) As used in this section,

10 (1) "active term of imprisonment" has the meaning given in  
11 AS 12.55.185;

12 (2) "primary crime" has the meaning given in AS 12.55.127.

13 \* Sec. 29. AS 33.16.100 is amended by adding a new subsection to read:

14 (e) If the parole board considers an application for discretionary parole, and  
15 denies parole because the prisoner does not meet the standards in (a) of this section,  
16 the board may make a prisoner ineligible for further consideration of discretionary  
17 parole, or may require that additional time be served before the prisoner is again  
18 eligible for consideration for discretionary parole.

19 \* Sec. 30. AS 33.16.240(c) is amended to read:

20 (c) In addition to the powers granted to a police officer under (g) of this  
21 section, a [A] parole officer may, without a warrant, arrest a parolee for a violation of  
22 parole only if there is danger to the public, if there is a likelihood that the parolee will  
23 flee, or if the parolee committed a crime in the presence of the parole officer.

24 \* Sec. 31. AS 33.16.240 is amended by adding a new subsection to read:

25 (g) At any time within the period of parole supervision, a police officer  
26 certified by the Alaska Police Standards Council may detain a parolee if the officer  
27 has reasonable suspicion that the person has recently violated or may imminently  
28 violate a parole condition relating to one of the topics set out in AS 33.05.070(d). The  
29 officer may also arrest the parolee without a warrant if the officer has probable cause  
30 to believe that the person has violated a parole condition relating to one of the topics  
31 set out in AS 33.05.070(d).

1 \* Sec. 32. AS 12.55.125(k); AS 33.16.100(c), and 33.16.100(d) are repealed.

2 \* Sec. 33. The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 APPLICABILITY. Sections 1, 4, 6, 26, and 29 - 31 of this Act apply to offenses  
5 committed before, on, or after the effective date of this Act. Sections 2, 3, 5, 7 - 25, and 27 -  
6 28 of this Act apply to offenses committed on or after the effective date of this Act.  
7 References to prior offenses or convictions in secs. 8 - 21 of this Act include offenses  
8 committed before, on, or after the effective date of this Act.

9 \* Sec. 34. This Act takes effect July 1, 2005.

*Amend #4*

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 56(JUD)  
 (S) Publish Date: 1/21/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: "An Act relating to the content of indictments, sentencing, probation, and parole..." RDU: CRIMINAL  
 Sponsor: Senator Therriault Component: CDCO  
 Requester: Senate Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill modifies the laws governing the presumptive sentencing of felony offenders in Alaska, in response to *Blakely v. Washington*, a decision by the U.S. Supreme Court announced in June 2004. By careful amendment of Alaska's sentencing laws this legislation seeks to avoid the worst consequences of *Blakely*, which could prevent judges from considering all relevant factors in sentencing and causing undue complications in the criminal justice process. The Department of Law does not anticipate a fiscal impact from passage of this legislation.

Prepared by: Kathryn A. Daughhete, Director Phone 465-5427  
 Division: Administrative Services Date/Time 1/14/05 11:13 AM  
 Approved by: Kathryn Daughhete for Gregg D. Jenkes, Attorney General Date 1/14/2005  
 Agency: Department of Law

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 56(JUD)  
(S) Publish Date: 1/21/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
Title An Act relating to criminal law and RDU Institutional Facilities  
procedure, criminal sentences, and probation and parole Component Institution Director's Office  
Sponsor Senators Therriault, Seekins  
Requester Senate Judiciary Component No. 1381

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

SB56 modifies state law governing the presumptive sentencing of felony offenders in Alaska, in response to the United States Supreme Court decision, *Blakely v. Washington*. The legislation proposes to amend Alaska's sentencing laws to avoid the worst consequences of *Blakely*, which could make it difficult for judges to consider all relevant factors in sentencing, causing complications throughout the criminal justice process. The modified presumptive sentencing structure proposed in SB56 primarily will impact the process and not the end result of felony sentences; therefore the legislation will have a negligible, if any, effect on the length of sentences imposed. The Department of Corrections does not anticipate a fiscal impact to the Division of Institutions from the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director  
Division: Administrative Services  
Approved by: Portia Parker, Deputy Commissioner  
Agency: Department of Corrections

Phone: 465-4641  
Date/Time: 1/18/05 8:26 AM  
Date: 1/18/2005

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSSB 56(JUD)  
 (S) Publish Date: 1/21/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title An Act relating to criminal law... procedure, criminal sentences, and probation and parole RDU Probation and Parole  
 Component Probation and Parole Directors Ofc  
 Sponsor Senators Therriault, Seekins  
 Requester Senate Judiciary Component No. 2684

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

SB56 modifies state law governing the presumptive sentencing of felony offenders in Alaska, in response to the United States Supreme Court decision, *Blakely v. Washington*. The legislation proposes to amend Alaska's sentencing laws to avoid the worst consequences of *Blakely*, which could make it difficult for judges to consider all relevant factors in sentencing, causing complications throughout the criminal justice process. The modified presumptive sentencing structure proposed in SB56 primarily will impact the process and not the end result of felony sentences; therefore the legislation will have a negligible, if any, effect on the length of sentences imposed. The department also is unable to predict with any accuracy the future actions judges may or may not take regarding probation supervision, thus it is unknown whether the changes proposed in the legislation will have any impact on probation services.

Prepared by: Sharleen Griffin, Acting Director Phone 465-4641  
 Division Administrative Services Date/Time 1/18/05 12:57 PM  
 Approved by: Portia Parker, Deputy Commissioner Date 1/18/2005  
 Agency Department of Corrections

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: CSSB 56(JUD)  
 (S) Publish Date: 1/21/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act relating to content of indictments, RDU Alaska State Troopers  
sentencing, probation and parole Component AST Detachments  
 Sponsor Senators Therriault  
 Requester Senate Finance Component No. 2325

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Main						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Passage of this bill will have no fiscal impact on the Department of Public Safety. The expected increase in the number of arrests for this violation can be handled by available staff. Provisions of this bill will help enforce and insure that probationer's and parolee's are complying with their conditions. It also outlines a reasonable standard for arrest of probation/parole violations.

Prepared by: Lieutenant Todd Sharp Phone 907-269-4532  
 Division Alaska State Troopers Date/Time 1/21/05 9:06 AM  
 Approved by: Commissioner William Tandeske Date 1/21/2005  
 Agency Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 5  
 Bill Version: CSSB 56(JUD)  
 (S) Publish Date: 1/21/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to criminal law and procedure, RDU Legal and Advocacy Services  
sentencing, probation and parole Component Public Defender Agency  
 Sponsor Senators Therriault, Seekins  
 Requester SJUD Component No. 1631

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill modifies the laws governing the presumptive sentencing of felony offenders in Alaska, in response to *Blakely v. Washington*, a decision by the U.S. Supreme Court announced in June 2004. By careful amendment of Alaska's sentencing laws this legislation seeks to avoid the worst consequences of *Blakely*, which could prevent judges from considering all relevant factors in sentencing and causing undue complications in the criminal justice process. The Committee does not anticipated a fiscal impact from passage of this legislation.

Prepared by: Senate Judiciary Committee  
 Division: \_\_\_\_\_  
 Approved by: Senate Judiciary Committee  
 Agency: \_\_\_\_\_

Phone: \_\_\_\_\_  
 Date/Time: 1/20/05 5:58 PM  
 Date: 1/20/2005

It is the intent of the legislature in passing this bill to preserve the basic structure of Alaska's presumptive sentencing system, which is designed to avoid disparate sentences. With this bill the legislature sets out a sentencing framework, subject to judicial adjustment for statutory aggravating or mitigating factors that are determined in a manner that is constitutional under the decision of the U.S. Supreme Court in *Blakely v. Washington*. The single, definite presumptive terms set out in current law can unduly constrain the sentencing process, particularly under the mandates of *Blakely v. Washington*. Although the presumptive terms are being replaced by presumptive ranges, it is not the intent of this bill in doing so to bring about an overall increase in the amount of active imprisonment for felony sentences. Rather, the bill is intended to give judges the authority to impose an appropriate sentence, with an appropriate amount of probation supervision, by taking into account the considerations set out in AS 12.55.005 and 12.55.015.

**SENATE BILL NO. 56**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY SENATORS THERRIAULT, Seekins**

**Introduced: 1/14/05  
Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to criminal law and procedure, criminal sentences, and probation and**  
2 **parole; and providing for an effective date."**

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

4 **\* Section 1.** AS 12.40.100 is amended by adding a new subsection to read:

5 (c) An indictment that complies with this section and with applicable rules  
6 adopted by the supreme court, is valid and need not specify aggravating factors set out  
7 in AS 12.55.155.

8 **\* Sec. 2.** AS 12.55.015(a) is amended to read:

9 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing  
10 sentence on a defendant convicted of an offense, may singly or in combination

11 (1) impose a

12 (A) fine when authorized by law and as provided in  
13 AS 12.55.035; or

14 (B) day fine when authorized by law and as provided in

1 AS 12.55.036 if the court does not impose a term of periodic or continuous  
2 imprisonment or place the defendant on probation;

3 (2) order the defendant to be placed on probation under conditions  
4 specified by the court that may include provision for active supervision;

5 (3) impose a definite term of periodic imprisonment, but only if an  
6 employment obligation of the defendant preexisted sentencing and continuous  
7 incarceration would cause extreme hardship to the defendant's ability to pay  
8 finest or restitution: Amended  
# 1

9 (4) impose a definite term of continuous imprisonment;

10 (5) order the defendant to make restitution under AS 12.55.045;

11 (6) order the defendant to carry out a continuous or periodic program  
12 of community work under AS 12.55.055;

13 (7) suspend execution of all or a portion of the sentence imposed under  
14 AS 12.55.080;

15 (8) suspend imposition of sentence under AS 12.55.085;

16 (9) order the forfeiture to the commissioner of public safety or a  
17 municipal law enforcement agency of a deadly weapon that was in the actual  
18 possession of or used by the defendant during the commission of an offense described  
19 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

20 (10) order the defendant, while incarcerated, to participate in or  
21 comply with the treatment plan of a rehabilitation program that is related to the  
22 defendant's offense or to the defendant's rehabilitation if the program is made available  
23 to the defendant by the Department of Corrections;

24 (11) order the forfeiture to the state of a motor vehicle, weapon,  
25 electronic communication device, or money or other valuables, used in or obtained  
26 through an offense that was committed for the benefit of, at the direction of, or in  
27 association with a criminal street gang;

28 (12) order the defendant to have no contact, either directly or  
29 indirectly, with a victim or witness of the offense until the defendant is  
30 unconditionally discharged.

31 \* Sec. 3. AS 12.55.025(i) is amended to read:

1 (i) Except as provided by AS 12.55.125(a)(3), [12.55.125(k),] 12.55.145(d),  
 2 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof  
 3 applies to sentencing proceedings.

4 \* Sec. 4. AS 12.55.055(d) is amended to read:

5 (d) The court may offer a defendant convicted of an offense the option of  
 6 performing community work in lieu of a sentence of imprisonment. Substitution of  
 7 community work shall be at a rate of eight hours for each day of imprisonment. A  
 8 court may not offer substitution of community work for any mandatory minimum  
 9 period of imprisonment or for any period within the [OF A] presumptive range  
 10 [TERM] of imprisonment for the offense.

11 \* Sec. 5. AS 12.55.088(c) is amended to read:

12 (c) A [NO] sentence may not be reduced or modified so as to result in a term  
 13 of imprisonment that [WHICH] is less than the minimum [OR PRESUMPTIVE]  
 14 sentence or within the presumptive range required by law for the original sentence.

15 \* Sec. 6. AS 12.55.100(a) is amended to read:

16 (a) While on probation and among the conditions of probation, the defendant  
 17 may be required

18 (1) to pay a fine in one or several sums;

19 (2) to make restitution or reparation to aggrieved parties for actual  
 20 damages or loss caused by the crime for which conviction was had, including  
 21 compensation to a victim that is a nonprofit organization for the value of labor or  
 22 goods provided by volunteers if the labor or goods were necessary to alleviate or  
 23 mitigate the effects of the defendant's crime;

24 (3) to provide for the support of any persons for whose support the  
 25 defendant is legally responsible;

26 (4) to perform community work in accordance with AS 12.55.055;

27 (5) to participate in or comply with the treatment plan of an inpatient  
 28 or outpatient rehabilitation program specified by either the court or the defendant's  
 29 probation officer that is related to the defendant's offense or to the defendant's  
 30 rehabilitation; [AND]

31 (6) to satisfy the screening, evaluation, referral, and program

1 requirements of an agency authorized by the court to make referrals for rehabilitation  
2 treatment or to provide rehabilitative treatment; and

3 (7) if ordered by the court, to abide by additional conditions of  
4 probation imposed by the defendant's probation officer; an additional condition  
5 imposed by the probation officer must be provided in writing to the defendant;  
6 the additional condition is binding upon delivery until modified by the court; this  
7 paragraph does not require written notice of conditions relating to the day-to-day  
8 management of probationers, in which probation officers direct the activities of  
9 probationers to implement existing court-imposed conditions.

*only and*  
*Am J#*  
*2*

10 \* Sec. 7. AS 12.55.120 is amended by adding a new subsection to read:

11 (e) A sentence reviewed by the appellate court under this section and  
12 AS 22.07.020, or by the superior court under AS 22.10.020, or a sentence reviewed by  
13 petition accepted under court rules, may not be reversed as excessive, and the  
14 sentencing court is not required to make specific findings, if the sentence is within an  
15 applicable presumptive range set out in AS 12.55.125, or is a consecutive or partially  
16 consecutive sentence imposed in accordance with the minimum sentences set out in  
17 AS 12.55.127.

} ?

18 \* Sec. 8. AS 12.55.125(c) is amended to read:

19 (c) Except as provided in (i) of this section, a defendant convicted of a class A  
20 felony may be sentenced to a definite term of imprisonment of not more than 20 years,  
21 and shall be sentenced to a definite term within the following presumptive ranges  
22 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

23 (1) if the offense is a first felony conviction and does not involve  
24 circumstances described in (2) of this subsection, five to eight [FIVE] years;

25 (2) if the offense is a first felony conviction

26 [(A) OTHER THAN FOR MANSLAUGHTER] and the  
27 defendant possessed a firearm, used a dangerous instrument, or caused serious  
28 physical injury or death during the commission of the offense, or knowingly  
29 directed the conduct constituting the offense at a uniformed or otherwise  
30 clearly identified peace officer, fire fighter, correctional employee, emergency  
31 medical technician, paramedic, ambulance attendant, or other emergency

1 responder who was engaged in the performance of official duties at the time of  
2 the offense, seven to eleven [SEVEN] years;

3 [(B) FOR MANSLAUGHTER AND THE CONDUCT  
4 RESULTING IN THE CONVICTION WAS KNOWINGLY DIRECTED  
5 TOWARDS A CHILD UNDER THE AGE OF 16, SEVEN YEARS;

6 (C) FOR MANSLAUGHTER AND THE CONDUCT  
7 RESULTING IN THE CONVICTION INVOLVED DRIVING WHILE  
8 UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE,  
9 INHALANT, OR CONTROLLED SUBSTANCE, SEVEN YEARS;]

10 (3) if the offense is a second felony conviction, 10 to 14 [10] years;

11 (4) if the offense is a third felony conviction and the defendant is not  
12 subject to sentencing under (f) of this section, 15 to 20 [15] years.

13 \* Sec. 9. AS 12.55.125(d) is amended to read:

14 (d) Except as provided in (i) of this section, a defendant convicted of a class B  
15 felony may be sentenced to a definite term of imprisonment of not more than 10 years,  
16 and shall be sentenced to a definite term within the following presumptive ranges  
17 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

20 (2) if the offense is a first felony conviction, the defendant violated  
21 AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

22 (3) if the offense is a second felony conviction, four to seven [FOUR]  
23 years;

24 (4) [(2)] if the offense is a third felony conviction, six to ten [SIX]  
25 years.

26 \* Sec. 10. AS 12.55.125(e) is amended to read:

27 (e) Except as provided in (i) of this section, a defendant convicted of a class C  
28 felony may be sentenced to a definite term of imprisonment of not more than five  
29 years, and shall be sentenced to a definite term within the following presumptive  
30 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

1 circumstances described in (4) of this subsection, zero to two years;

2 (2) if the offense is a second felony conviction, two to four [TWO]  
3 years;

4 (3) [(2)] if the offense is a third felony conviction, three to five  
5 [THREE] years;

6 (4) [(3)] if the offense is a first felony conviction, and the defendant  
7 violated AS 08.54.720(a)(15), one to two years [ONE YEAR].

8 \* Sec. 11. AS 12.55.125(g) is amended to read:

9 (g) If a defendant is sentenced under (c), (d), (e) [(d)(1), (d)(2), (e)(1), (e)(2),  
10 (e)(3)], or (i) of this section, except to the extent permitted under AS 12.55.155 -  
11 12.55.175,

12 (1) imprisonment may not be suspended under AS 12.55.080;

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

14 (3) terms of imprisonment may not be otherwise reduced.

15 \* Sec. 12. AS 12.55.125(i) is amended to read:

16 (i) A defendant convicted of

17 (1) sexual assault in the first degree or sexual abuse of a minor in the  
18 first degree may be sentenced to a definite term of imprisonment of not more than 40  
19 years and shall be sentenced to a definite term within the following presumptive  
20 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

21 (A) if the offense is a first felony conviction and does not  
22 involve circumstances described in (B) of this paragraph, eight to twelve  
23 [EIGHT] years;

24 (B) if the offense is a first felony conviction and the defendant  
25 possessed a firearm, used a dangerous instrument, or caused serious physical  
26 injury during the commission of the offense, 12 to 16 [10] years;

27 (C) if the offense is a second felony conviction and does not  
28 involve circumstances described in (D) of this paragraph, 15 to 20 [15] years;

29 (D) if the offense is a second felony conviction and the  
30 defendant has a prior conviction for a sexual felony, 20 to 30 [20] years;

31 (E) if the offense is a third felony conviction and the defendant

1 is not subject to sentencing under (F) of this paragraph or (I) of this section, 25  
2 to 35 [25] years;

3 (F) if the offense is a third felony conviction, the defendant is  
4 not subject to sentencing under (I) of this section, and the defendant has two  
5 prior convictions for sexual felonies, 30 to 40 [30] years;

6 (2) attempt, conspiracy, or solicitation to commit sexual assault in the  
7 first degree or sexual abuse of a minor in the first degree may be sentenced to a  
8 definite term of imprisonment of not more than 30 years and shall be sentenced to a  
9 definite term within the following presumptive ranges [TERMS], subject to  
10 adjustment as provided in AS 12.55.155 - 12.55.175:

11 (A) if the offense is a first felony conviction and does not  
12 involve circumstances described in (B) of this paragraph, five to eight [FIVE]  
13 years;

14 (B) if the offense is a first felony conviction, and the defendant  
15 possessed a firearm, used a dangerous instrument, or caused serious physical  
16 injury during the commission of the offense, 10 to 14 [10] years;

17 (C) if the offense is a second felony conviction and does not  
18 involve circumstances described in (D) of this paragraph, 12 to 16 [10] years;

19 (D) if the offense is a second felony conviction and the  
20 defendant has a prior conviction for a sexual felony, 15 to 20 [15] years;

21 (E) if the offense is a third felony conviction, does not involve  
22 circumstances described in (F) of this paragraph, and the defendant is not  
23 subject to sentencing under (I) of this section, 15 to 25 [15] years;

24 (F) if the offense is a third felony conviction, the defendant is  
25 not subject to sentencing under (I) of this section, and the defendant has two  
26 prior convictions for sexual felonies, 20 to 30 [20] years;

27 (3) sexual assault in the second degree, sexual abuse of a minor in the  
28 second degree, unlawful exploitation of a minor, or distribution of child pornography  
29 may be sentenced to a definite term of imprisonment of not more than 20 years and  
30 shall be sentenced to a definite term within the following presumptive ranges  
31 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

1 (A) if the offense is a first felony conviction, two to four  
 2 years;

3 (B) if the offense is a second felony conviction and does not  
 4 involve circumstances described in (C) [(B)] of this paragraph, five to eight  
 5 [FIVE] years;

6 (C) [(B)] if the offense is a second felony conviction and the  
 7 defendant has a prior conviction for a sexual felony, 10 to 14 [10] years;

8 (D) [(C)] if the offense is a third felony conviction, does not  
 9 involve circumstances described in (E) [(D)] of this paragraph, 10 to 14 [10]  
 10 years;

11 (E) [(D)] if the offense is a third felony conviction, and the  
 12 defendant has two prior convictions for sexual felonies, 15 to 20 [15] years;

13 (4) sexual assault in the third degree, incest, indecent exposure in the  
 14 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to  
 15 commit sexual assault in the second degree, sexual abuse of a minor in the second  
 16 degree, unlawful exploitation of a minor, or distribution of child pornography, may be  
 17 sentenced to a definite term of imprisonment of not more than 10 years and shall be  
 18 sentenced to a definite term within the following presumptive ranges [TERMS],  
 19 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

20 (A) if the offense is a first felony conviction, one to two  
 21 years;

22 (B) if the offense is a second felony conviction and does not  
 23 involve circumstances described in (C) [(B)] of this paragraph, two to five  
 24 [TWO] years;

25 (C) [(B)] if the offense is a second felony conviction and the  
 26 defendant has a prior conviction for a sexual felony, three to six [THREE]  
 27 years;

28 (D) [(C)] if the offense is a third felony conviction and does not  
 29 involve circumstances described in (E) [(D)] of this paragraph, three to six  
 30 [THREE] years;

31 (E) [(D)] if the offense is a third felony conviction and the

1 defendant has two prior convictions for sexual felonies, six to ten [SIX] years.

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

3 (n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i)  
4 of this section, the total term, made up of the active term of imprisonment plus any  
5 suspended term of imprisonment, must fall within the presumptive range, and the  
6 active term of imprisonment may not fall below the lower end of the presumptive  
7 range.

8 \* Sec. 14. AS 12.55.127(d) is amended by adding a new paragraph to read:

9 (4) "presumptive term" means the middle of the applicable  
10 presumptive range set out in AS 12.55.125.

11 \* Sec. 15. AS 12.55.145(a) is amended to read:

12 (a) For purposes of considering prior convictions in imposing sentence under

13 (1) AS 12.55.125(c), (d), or (e) [(d)(1), (d)(2), (e)(1), OR (e)(2)],

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

18 (B) a conviction in this or another jurisdiction of an offense  
19 having elements similar to those of a felony defined as such under Alaska law  
20 at the time the offense was committed is considered a prior felony conviction;

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

28 (2) AS 12.55.125(f),

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

1 (B) commission of and conviction for offenses relied on as  
2 prior most serious felony offenses must occur in the following order:  
3 conviction for the first offense must occur before commission of the second  
4 offense, and conviction for the second offense must occur before commission  
5 of the offense for which the defendant is being sentenced;

6 (3) AS 12.55.135(g),

7 (A) a prior conviction may not be considered if a period of five  
8 or more years has elapsed between the date of the defendant's unconditional  
9 discharge on the immediately preceding offense and commission of the present  
10 offense unless the prior conviction was for an unclassified or class A felony;

11 (B) a conviction in this or another jurisdiction of an offense  
12 having elements similar to those of a crime against a person or a crime  
13 involving domestic violence is considered a prior conviction;

14 (C) two or more convictions arising out of a single, continuous  
15 criminal episode during which there was no substantial change in the nature of  
16 the criminal objective are considered a single conviction unless the defendant  
17 was sentenced to consecutive sentences for the crimes; offenses committed  
18 while attempting to escape or avoid detection or apprehension after the  
19 commission of another offense are not part of the same criminal episode or  
20 objective;

21 (4) AS 12.55.125(i),

22 (A) a conviction in this or another jurisdiction of an offense  
23 having elements similar to those of a sexual felony is a prior conviction for a  
24 sexual felony;

25 (B) a felony conviction in another jurisdiction making it a  
26 crime to commit any lewd and lascivious act upon a child under the age of 16  
27 years, with the intent of arousing, appealing to, or gratifying the sexual desires  
28 of the defendant or the victim is a prior conviction for a sexual felony;

29 (C) two or more convictions arising out of a single, continuous  
30 criminal episode during which there was no substantial change in the nature of  
31 the criminal objective are considered a single conviction unless the defendant

1 was sentenced to consecutive sentences for the crimes; offenses committed  
 2 while attempting to escape or avoid detection or apprehension after the  
 3 commission of another offense are not part of the same criminal episode or  
 4 objective.

5 \* Sec. 16. AS 12.55.155(a) is amended to read:

6 (a) Except as provided in (e) of this section, if [IF] a defendant is convicted  
 7 of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i)  
 8 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (c)(3), OR (i)] and

9 (1) the low end of the presumptive range [TERM] is four years or  
 10 less, the court may impose any sentence below the presumptive range [DECREASE  
 11 THE PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS THE  
 12 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of  
 13 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
 14 for factors in aggravation;

15 (2) the low end of the presumptive range [TERM OF  
 16 IMPRISONMENT] is more than four years, the court may impose a sentence below  
 17 the presumptive range as long as the active term of imprisonment is not less than  
 18 50 percent of the low end of the presumptive range [DECREASE THE  
 19 PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS 50 PERCENT OF THE  
 20 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of  
 21 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
 22 for factors in aggravation.

23 \* Sec. 17. AS 12.55.155(b) is amended to read:

24 (b) Sentences [SENTENCE INCREMENTS AND DECREMENTS] under  
 25 this section that are outside of the presumptive ranges set out in AS 12.55.125  
 26 shall be based on the totality of the aggravating and mitigating factors set out in (c)  
 27 and (d) of this section.

28 \* Sec. 18. AS 12.55.155(c) is amended to read:

29 (c) The following factors shall be considered by the sentencing court if  
 30 proven in accordance with this section, and may allow imposition of a sentence  
 31 above the presumptive range [AND MAY AGGRAVATE THE PRESUMPTIVE

- 1 TERMS] set out in AS 12.55.125:
- 2 (1) a person, other than an accomplice, sustained physical injury as a
- 3 direct result of the defendant's conduct;
- 4 (2) the defendant's conduct during the commission of the offense
- 5 manifested deliberate cruelty to another person;
- 6 (3) the defendant was the leader of a group of three or more persons
- 7 who participated in the offense;
- 8 (4) the defendant employed a dangerous instrument in furtherance of
- 9 the offense;
- 10 (5) the defendant knew or reasonably should have known that the
- 11 victim of the offense was particularly vulnerable or incapable of resistance due to
- 12 advanced age, disability, ill health, or extreme youth or was for any other reason
- 13 substantially incapable of exercising normal physical or mental powers of resistance;
- 14 (6) the defendant's conduct created a risk of imminent physical injury
- 15 to three or more persons, other than accomplices;
- 16 (7) a prior felony conviction considered for the purpose of invoking a
- 17 [THE] presumptive range under [TERMS OF] this chapter was of a more serious
- 18 class of offense than the present offense;
- 19 (8) the defendant's prior criminal history includes conduct involving
- 20 aggravated or repeated instances of assaultive behavior;
- 21 (9) the defendant knew that the offense involved more than one victim;
- 22 (10) the conduct constituting the offense was among the most serious
- 23 conduct included in the definition of the offense;
- 24 (11) the defendant committed the offense under [PURSUANT TO] an
- 25 agreement that the defendant either pay or be paid for the commission of the offense,
- 26 and the pecuniary incentive was beyond that inherent in the offense itself;
- 27 (12) the defendant was on release under AS 12.30.020 or 12.30.040 for
- 28 another felony charge or conviction or for a misdemeanor charge or conviction having
- 29 assault as a necessary element;
- 30 (13) the defendant knowingly directed the conduct constituting the
- 31 offense at an active officer of the court or at an active or former judicial officer,

1 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,  
2 emergency medical technician, paramedic, ambulance attendant, or other emergency  
3 responder during or because of the exercise of official duties;

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

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

8 (16) the defendant's criminal conduct was designed to obtain  
9 substantial pecuniary gain and the risk of prosecution and punishment for the conduct  
10 is slight;

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

14 (18) the offense was a felony

15 (A) specified in AS 11.41 and was committed against a spouse,  
16 a former spouse, or a member of the social unit made up of [COMPRISED  
17 OF] those living together in the same dwelling as the defendant;

18 (B) specified in AS 11.41.410 - 11.41.458 and the defendant  
19 has engaged in the same or other conduct prohibited by a provision of  
20 AS 11.41.410 - 11.41.460 involving the same or another victim; or

21 (C) specified in AS 11.41 that is a crime involving domestic  
22 violence and was committed in the physical presence or hearing of a child  
23 under 16 years of age who was, at the time of the offense, living within the  
24 residence of the victim, the residence of the perpetrator, or the residence where  
25 the crime involving domestic violence occurred;

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

28 (20) the defendant was on furlough under AS 33.30 or on parole or  
29 probation for another felony charge or conviction that would be considered a prior  
30 felony conviction under AS 12.55.145(a)(1)(B);

31 (21) the defendant has a criminal history of repeated instances of

1 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,  
2 similar in nature to the offense for which the defendant is being sentenced under this  
3 section;

4 (22) the defendant knowingly directed the conduct constituting the  
5 offense at a victim because of that person's race, sex, color, creed, physical or mental  
6 disability, ancestry, or national origin;

7 (23) the defendant is convicted of an offense specified in AS 11.71 and

8 (A) the offense involved the delivery of a controlled substance  
9 under circumstances manifesting an intent to distribute the substance as part of  
10 a commercial enterprise; or

11 (B) at the time of the conduct resulting in the conviction, the  
12 defendant was caring for or assisting in the care of a child under 10 years of  
13 age;

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

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

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

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

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

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

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

30 (29) the defendant committed the offense for the benefit of, at the  
31 direction of, or in association with a criminal street gang;

1 (30) the defendant is convicted of an offense specified in AS 11.41.410  
 2 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
 3 the victim in furtherance of the offense with the intent to make the victim  
 4 incapacitated; in this paragraph, "incapacitated" has the meaning given in  
 5 AS 11.41.470;

6 (31) the defendant's prior criminal history includes convictions for  
 7 five or more crimes in this or another jurisdiction that are class A misdemeanors  
 8 under the law of this state, or having elements similar to a class A misdemeanor;  
 9 two or more convictions arising out of a single continuous episode are considered  
 10 a single conviction; however, an offense is not a part of a continuous episode if  
 11 committed while attempting to escape or resist arrest or if it is an assault upon a  
 12 uniformed or otherwise clearly identified peace officer; notice and denial of  
 13 convictions are governed by AS 12.55.145(b), (c), and (d).

14 \* Sec. 19. AS 12.55.155(d) is amended to read:

15 (d) The following factors shall be considered by the sentencing court if  
 16 proven in accordance with this section, and may allow imposition of a sentence  
 17 below the presumptive range [AND MAY MITIGATE THE PRESUMPTIVE  
 18 TERMS] set out in AS 12.55.125:

19 (1) the offense was principally accomplished by another person, and  
 20 the defendant manifested extreme caution or sincere concern for the safety or well-  
 21 being of the victim;

22 (2) the defendant, although an accomplice, played only a minor role in  
 23 the commission of the offense;

24 (3) the defendant committed the offense under some degree of duress,  
 25 coercion, threat, or compulsion insufficient to constitute a complete defense, but that  
 26 [WHICH] significantly affected the defendant's conduct;

27 (4) the conduct of a youthful defendant was substantially influenced by  
 28 another person more mature than the defendant;

29 (5) the conduct of an aged defendant was substantially a product of  
 30 physical or mental infirmities resulting from the defendant's age;

31 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the

1 defendant acted with serious provocation from the victim;

2 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,  
3 the victim provoked the crime to a significant degree;

4 (8) [REPEALED

5 (9)] the conduct constituting the offense was among the least serious  
6 conduct included in the definition of the offense;

7 (9) [(10)] before the defendant knew that the criminal conduct had  
8 been discovered, the defendant fully compensated or made a good faith effort to fully  
9 compensate the victim of the defendant's criminal conduct for any damage or injury  
10 sustained;

11 (10) [(11)] the defendant was motivated to commit the offense solely  
12 by an overwhelming compulsion to provide for emergency necessities for the  
13 defendant's immediate family;

14 (11) [(12)] the defendant assisted authorities to detect, apprehend, or  
15 prosecute other persons who committed an offense;

16 (12) [(13)] the facts surrounding the commission of the offense and  
17 any previous offenses by the defendant establish that the harm caused by the  
18 defendant's conduct is consistently minor and inconsistent with the imposition of a  
19 substantial period of imprisonment;

20 (13) [(14)] the defendant is convicted of an offense specified in  
21 AS 11.71 and the offense involved small quantities of a controlled substance;

22 (14) [(15)] the defendant is convicted of an offense specified in  
23 AS 11.71 and the offense involved the distribution of a controlled substance, other  
24 than a schedule IA controlled substance, to a personal acquaintance who is 19 years of  
25 age or older for no profit;

26 (15) [(16)] the defendant is convicted of an offense specified in  
27 AS 11.71 and the offense involved the possession of a small amount of a controlled  
28 substance for personal use in the defendant's home;

29 (16) [(17)] in a conviction for assault or attempted assault or for  
30 homicide or attempted homicide, the defendant acted in response to domestic violence  
31 perpetrated by the victim against the defendant and the domestic violence consisted of

1 aggravated or repeated instances of assaultive behavior.

2 \* Sec. 20. AS 12.55.155(e) is amended to read:

3 (e) If a factor in aggravation is a necessary element of the present offense, or  
4 requires the imposition of a sentence within the presumptive range [TERM] under  
5 AS 12.55.125(c)(2), that factor may not be used to impose a sentence above the high  
6 end of [AGGRAVATE] the presumptive range [TERM]. If a factor in mitigation is  
7 raised at trial as a defense reducing the offense charged to a lesser included offense,  
8 that factor may not be used to impose a sentence below the low end of [MITIGATE]  
9 the presumptive range [TERM].

10 \* Sec. 21. AS 12.55.155(f) is amended to read:

11 (f) If the state seeks to establish a factor in aggravation at sentencing

12 (1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this  
13 section, or if the defendant seeks to establish a factor in mitigation at sentencing,  
14 written notice must be served on the opposing party and filed with the court not later  
15 than 10 days before the date set for imposition of sentence; the factors [. FACTORS]  
16 in aggravation listed in this paragraph, and factors in mitigation must be established  
17 by clear and convincing evidence before the court sitting without a jury; all [. ALL]  
18 findings must be set out with specificity;

19 (2) other than one listed in (1) of this subsection, the factor shall be  
20 presented to a trial jury under procedures set by the court, unless the defendant  
21 waives trial by jury, stipulates to the existence of the factor, or consents to have  
22 the factor proven under procedures set out in (1) of this subsection; a factor in  
23 aggravation presented to a jury is established if proved beyond a reasonable  
24 doubt; written notice of the intent to establish a factor in aggravation must be  
25 served on the defendant and filed with the court

26 (A) 10 days before trial, or at another time specified by the  
27 court;

28 (B) within 48 hours, or at a time specified by the court, if  
29 the court instructs the jury about the option to return a verdict for a lesser  
30 included offense; or

31 (C) five days before entering a plea that results in a finding

1 of guilt, or at another time specified by the court.

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

3 (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or  
 4 (i) [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and the court finds by  
 5 clear and convincing evidence that manifest injustice would result from failure to  
 6 consider relevant aggravating or mitigating factors not specifically included in  
 7 AS 12.55.155 or from imposition of a sentence within the presumptive range  
 8 [TERM], whether or not adjusted for aggravating or mitigating factors, the court shall  
 9 enter findings and conclusions and cause a record of the proceedings to be transmitted  
 10 to a three-judge panel for sentencing under AS 12.55.175.

11 \* Sec. 23. AS 12.55.175(b) is amended to read:

12 (b) Upon receipt of a record of proceedings under AS 12.55.165, the three-  
 13 judge panel shall consider all pertinent files, records, and transcripts, including the  
 14 findings and conclusions of the judge who originally heard the matter. The panel may  
 15 hear oral testimony to supplement the record before it. If the panel supplements the  
 16 record, the panel shall permit the victim to testify before the panel. If the panel finds  
 17 that manifest injustice would result from failure to consider relevant aggravating or  
 18 mitigating factors not specifically included in AS 12.55.155 or from imposition of a  
 19 sentence within the presumptive range [TERM], whether or not adjusted for  
 20 aggravating or mitigating factors, it shall sentence the defendant in accordance with  
 21 this section. If the panel does not find that manifest injustice would result, it shall  
 22 remand the case to the sentencing court, with a written statement of its findings and  
 23 conclusions, for sentencing under AS 12.55.125.

24 \* Sec. 24. AS 12.55.175(e) is amended to read:

25 (e) If the three-judge panel determines under (b) of this section that manifest  
 26 injustice would result from imposition of a sentence within the presumptive range  
 27 [TERM] and the panel also finds that the defendant has an exceptional potential for  
 28 rehabilitation and that a sentence of less than the presumptive range [TERM] should  
 29 be imposed because of the defendant's exceptional potential for rehabilitation, the  
 30 panel

31 (1) shall sentence the defendant within [TO] the presumptive range

1 [TERM] required under AS 12.55.125 or as permitted under AS 12.55.155:

2 (2) shall order the defendant under AS 12.55.015 to engage in  
3 appropriate programs of rehabilitation; and

4 (3) may provide that the defendant is eligible for discretionary parole  
5 under AS 33.16.090 during the second half of the sentence imposed under this  
6 subsection if the defendant successfully completes all rehabilitation programs ordered  
7 under (2) of this subsection.

8 \* Sec. 25. AS 12.55.185 is amended by adding a new paragraph to read:

9 (18) "active term of imprisonment" has the meaning given in  
10 AS 12.55.127.

11 \* Sec. 26. AS 33.05.070 is amended by adding new subsections to read:

12 (c) At any time within the probation period, a police officer certified by the  
13 Alaska Police Standards Council may detain a probationer if the police officer has  
14 reasonable suspicion that the probationer has recently violated or may imminently  
15 violate a probation condition relating to one of the topics set out in (d) of this section.  
16 The police officer may also arrest the probationer without a warrant if the police  
17 officer has probable cause to believe that the probationer has violated a probation  
18 condition relating to one of the topics set out in (d) of this section.

19 (d) The conditions that permit a police officer to detain or arrest a probationer  
20 or parolee without a warrant under AS 33.16.240 and (c) of this section are those  
21 conditions imposed by the court, or the parole board, relating to

22 (1) geographic limitations on the probationer's movements;

23 (2) possessing or consuming controlled substances under state or  
24 federal law;

25 (3) possessing firearms;

26 (4) possessing or consuming alcoholic beverages, or being in a place  
27 where they are sold or served;

28 (5) operating or driving a motor vehicle; or

29 (6) other conduct that creates an imminent public danger or threatens  
30 serious harm to persons or property.

31 \* Sec. 27. AS 33.16.085(a) is amended to read:

1 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term  
2 or sentence a prisoner may be serving or any restriction on parole eligibility under  
3 AS 12.55, a prisoner who is serving a term of at least 181 days, may, upon application  
4 by the prisoner or the commissioner, be released by the board on special medical  
5 parole if the board determines that

6 (1) the prisoner has not been convicted of an offense under  
7 AS 11.41.410 - 11.41.425 or 11.41.434 - 11.41.438 and the prisoner is severely  
8 medically or cognitively disabled as certified in writing by a physician licensed under  
9 AS 08.64

10 (2) a reasonable probability exists that

11 (A) the prisoner will live and remain at liberty without  
12 violating any laws or conditions imposed by the board;

13 (B) because of the prisoner's severe medical or cognitive  
14 disability, the prisoner will not pose a threat of harm to the public if released  
15 on parole; and

16 (C) release of the prisoner on parole would not diminish the  
17 seriousness of the crime;

18 (3) the prisoner

19 (A) was not suffering from the severe medical or cognitive  
20 disability at the time the prisoner committed the offense or parole or probation  
21 violation for which the prisoner is presently incarcerated; or

22 (B) was suffering from the severe medical or cognitive  
23 disability at the time the prisoner committed the offense or parole or probation  
24 violation for which the prisoner is presently incarcerated and the medical or  
25 cognitive disability has progressed so that the likelihood of the prisoner's  
26 committing the same or a similar offense is low;

27 (4) the care and supervision that the prisoner requires can be provided  
28 in a more medically appropriate or cost-effective manner than by the department;

29 (5) the prisoner is incapacitated to an extent that incarceration does not  
30 impose significant additional restrictions on the prisoner;

31 (6) the prisoner is likely to remain subject to the severe medical or

1 cognitive disability throughout the entire period of parole or to die and there is no  
 2 reasonable expectation that the prisoner's medical or cognitive disability will improve  
 3 noticeably; and

4 (7) an appropriate discharge plan has been formulated that addresses  
 5 basic life domains of the prisoner, including care coordination, housing, eligibility for  
 6 public benefits, and health care, including necessary medication.

7 \* **Sec. 28.** AS 33.16.090 is repealed and reenacted to read:

8 **Sec. 33.16.090. Eligibility for discretionary parole and minimum terms to**  
 9 **be served.** (a) A prisoner sentenced to an active term of imprisonment of at least 181  
 10 days may, in the discretion of the board, be released on discretionary parole if the  
 11 prisoner has served the amount of time specified under (b) of this section, except that

12 (1) a prisoner sentenced to one or more mandatory 99-year terms under  
 13 AS 12.55.125(a) or one or more definite terms under AS 12.55.125(f) is not eligible  
 14 for consideration for discretionary parole;

15 (2) a prisoner is not eligible for consideration of discretionary parole if  
 16 made ineligible by order of a court under AS 12.55.115;

17 (3) a prisoner imprisoned under AS 12.55.086 is not eligible for  
 18 discretionary parole unless the actual term of imprisonment is more than one year.

19 (b) A prisoner eligible under (a) of this section who is sentenced

20 (1) to a single sentence under AS 12.55.125(a) or (b) may not be  
 21 released on discretionary parole until the prisoner has served the mandatory minimum  
 22 term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment  
 23 imposed, or any term set under AS 12.55.115, whichever is greatest;

24 (2) to a single sentence within or below a presumptive range set out in  
 25 AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i), and has not been allowed by the  
 26 three-judge panel under AS 12.55.175 to be considered for discretionary parole  
 27 release, may not be released on discretionary parole until the prisoner has served the  
 28 term imposed, less good time earned under AS 33.20.010;

29 (3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and  
 30 (4), or (i), and has been allowed by the three-judge panel under AS 12.55.175 to be  
 31 considered for discretionary parole release during the second half of the sentence, may

1 not be released on discretionary parole until

2 (A) the prisoner has served that portion of the active term of  
3 imprisonment required by the three-judge panel; and

4 (B) in addition to the factors set out in AS 33.16.100(a), the  
5 board determines that

6 (i) the defendant has successfully completed all  
7 rehabilitation programs ordered by the three-judge panel that were  
8 made available to the prisoner; and

9 (ii) the prisoner would not constitute a danger to the  
10 public if released on parole;

11 (4) to a single enhanced sentence under AS 12.55.155(a) that is above  
12 the applicable presumptive range, may not be released on discretionary parole until the  
13 prisoner has served the greater of the following:

14 (A) an amount of time, less good time earned under  
15 AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth  
16 of the amount of time above the presumptive range; or

17 (B) any term set under AS 12.55.115;

18 (5) to a single sentence under any other provision of law, may not be  
19 released on discretionary parole until the prisoner has served at least one-fourth of the  
20 active term of imprisonment, any mandatory minimum sentence imposed under any  
21 provision of law, or any term set under AS 12.55.115, whichever is greatest;

22 (6) to concurrent sentences, may not be released on discretionary  
23 parole until the prisoner has served the greatest of

24 (A) any mandatory minimum sentence or sentences imposed  
25 under any provision of law;

26 (B) any term set under AS 12.55.115; or

27 (C) the amount of time that is required to be served under (1) -  
28 (5) of this subsection for the sentence imposed for the primary crime, had that  
29 been the only sentence imposed;

30 (7) to consecutive or partially consecutive sentences, may not be  
31 released on discretionary parole until the prisoner has served the greatest of

1 (A) the composite total of any mandatory minimum sentence or  
2 sentences imposed under any provision of law, including AS 12.55.127;

3 (B) any term set under AS 12.55.115; or

4 (C) the amount of time that is required to be served under (1) -  
5 (5) of this subsection for the sentence imposed for the primary crime, had that  
6 been the only sentence imposed, plus one-quarter of the composite total of the  
7 active term of imprisonment imposed as consecutive or partially consecutive  
8 sentences imposed for all crimes other than the primary crime.

9 (c) As used in this section,

10 (1) "active term of imprisonment" has the meaning given in  
11 AS 12.55.185;

12 (2) "primary crime" has the meaning given in AS 12.55.127.

13 \* Sec. 29. AS 33.16.100 is amended by adding a new subsection to read:

14 (c) If the parole board considers an application for discretionary parole, and  
15 denies parole because the prisoner does not meet the standards in (a) of this section,  
16 the board may make a prisoner ineligible for further consideration of discretionary  
17 parole, or may require that additional time be served before the prisoner is again  
18 eligible for consideration for discretionary parole.

19 \* Sec. 30. AS 33.16.240(c) is amended to read:

20 (c) In addition to the powers granted to a police officer under (g) of this  
21 section, a [A] parole officer may, without a warrant, arrest a parolee for a violation of  
22 parole only if there is danger to the public, if there is a likelihood that the parolee will  
23 flee, or if the parolee committed a crime in the presence of the parole officer.

24 \* Sec. 31. AS 33.16.240 is amended by adding a new subsection to read:

25 (g) At any time within the period of parole supervision, a police officer  
26 certified by the Alaska Police Standards Council may detain a parolee if the officer  
27 has reasonable suspicion that the person has recently violated or may imminently  
28 violate a parole condition relating to one of the topics set out in AS 33.05.070(d). The  
29 officer may also arrest the parolee without a warrant if the officer has probable cause  
30 to believe that the person has violated a parole condition relating to one of the topics  
31 set out in AS 33.05.070(d).

1     \* **Sec. 32.** AS 12.55.125(k); AS 33.16.100(c) and 33.16.100(d) are repealed.

2     \* **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4           **APPLICABILITY.** Sections 1, 4, 6, 26, and 29 - 31 of this Act apply to offenses  
5 committed before, on, or after the effective date of this Act. Sections 2, 3, 5, 7 - 25, and 27 -  
6 28 of this Act apply to offenses committed on or after the effective date of this Act.  
7 References to prior offenses or convictions in secs. 8 - 21 of this Act include offenses  
8 committed before, on, or after the effective date of this Act.

9     \* **Sec. 34.** This Act takes effect July 1, 2005.

# LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY  
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## MEMORANDUM

January 12, 2005

**SUBJECT:** Draft Bill on Various Criminal Law and Procedure Topics  
(Work Order No. 24-LS0308\G)

**TO:** Senator Ralph Seekins

**FROM:** Gerald P. Luckhaupt *ERD*  
Legislative Counsel

Enclosed is the second draft of this criminal law and procedure bill. This draft incorporates changes requested by Dean Guaneli of the Department of Law to the material they originally supplied to you in the first draft. I have two comments about the draft.

1. Section 2 of the draft provides that a judge may no longer impose a periodic sentence<sup>1</sup> except in one situation - when extreme hardship would result to the defendant's ability to pay restitution or fines as the sentence would interfere with the defendant's employment. The Department of Law is proposing this change because some judges have been trying to use this provision to require that prisoners be released to make doctor or dentist appointments, attend funerals, etc., and the department believes that keeping track of this is rather burdensome. It seems to me that this is a very large hammer for a rather small nail. Reasons for imposing periodic sentences go far beyond ability to pay restitution or fines and are often quite beneficial to the state. Having a defendant who is serving a 3 day, 5 day, 10 day, or 30 day sentence on weekends or in some other periodic manner often allows the defendant or the family of the defendant to keep working, stay in school, stay off of welfare or aid to families, etc. Sometimes allowing the service of a sentence periodically actually benefits the state by allowing the sentence to be served when the correctional institution is not already full. Allowing a defendant to receive medical care while the defendant is not incarcerated may actually reduce the burden on the state to provide medical care to prisoners. In any event, you should examine this provision closely. There may be an easier way to achieve the department's goals than virtually eliminating periodic sentencing as an available sentencing option.

2. Mr. Guaneli had me change the applicability section (Sec. 33) to make sections 26 and 29 - 31 of the bill apply to offenses committed before, on, or after the effective date of the

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<sup>1</sup> A periodic sentence is a sentence that is served in parts instead of in whole. For example, it is fairly common for judges to sentence persons to serve certain limited sentences on weekends so the person can keep their job, remain in school, or whatever.

Senator Ralph Sækins

January 12, 2005

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Act. While I see no problem with this change as to secs. 26 and 30 - 31, it can be argued that sec. 29 constitutes an impermissible change in sentence, an unconstitutional increase in punishment, when applied to offenses committed before the effective date of the Act. By allowing the board of parole to make a prisoner ineligible for further consideration of parole when they otherwise would have been eligible appears to be an increase in punishment. You should closely examine this provision and its application to offenses committed before the effective date of the Act.

GPL:med

05-021.med

Enclosure

**SENATE BILL NO.**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY SENATOR SEEKINS**

**Introduced:  
Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to criminal law and procedure, criminal sentences, and probation and**  
2 **parole; and providing for an effective date."**

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

4 **\* Section 1.** AS 12.40.100 is amended by adding a new subsection to read:

5 (c) An indictment that complies with this section and with applicable rules  
6 adopted by the supreme court, is valid and need not specify aggravating factors set out  
7 in AS 12.55.155.

8 **\* Sec. 2.** AS 12.55.015(a) is amended to read:

9 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing  
10 sentence on a defendant convicted of an offense, may singly or in combination

11 (1) impose a

12 (A) fine when authorized by law and as provided in  
13 AS 12.55.035; or

14 (B) day fine when authorized by law and as provided in

1 AS 12.55.036 if the court does not impose a term of periodic or continuous  
2 imprisonment or place the defendant on probation;

3 (2) order the defendant to be placed on probation under conditions  
4 specified by the court that may include provision for active supervision;

5 (3) impose a definite term of periodic imprisonment, but only if an  
6 employment obligation of the defendant preexisted sentencing and continuous  
7 incarceration would cause extreme hardship to the defendant's ability to pay  
8 finest or restitution:

9 (4) impose a definite term of continuous imprisonment;

10 (5) order the defendant to make restitution under AS 12.55.045;

11 (6) order the defendant to carry out a continuous or periodic program  
12 of community work under AS 12.55.055;

13 (7) suspend execution of all or a portion of the sentence imposed under  
14 AS 12.55.080;

15 (8) suspend imposition of sentence under AS 12.55.085;

16 (9) order the forfeiture to the commissioner of public safety or a  
17 municipal law enforcement agency of a deadly weapon that was in the actual  
18 possession of or used by the defendant during the commission of an offense described  
19 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

20 (10) order the defendant, while incarcerated, to participate in or  
21 comply with the treatment plan of a rehabilitation program that is related to the  
22 defendant's offense or to the defendant's rehabilitation if the program is made available  
23 to the defendant by the Department of Corrections;

24 (11) order the forfeiture to the state of a motor vehicle, weapon,  
25 electronic communication device, or money or other valuables, used in or obtained  
26 through an offense that was committed for the benefit of, at the direction of, or in  
27 association with a criminal street gang;

28 (12) order the defendant to have no contact, either directly or  
29 indirectly, with a victim or witness of the offense until the defendant is  
30 unconditionally discharged.

31 \* Sec. 3. AS 12.55.025(i) is amended to read:

1 (i) Except as provided by AS 12.55.125(a)(3), [12.55.125(k),] 12.55.145(d),  
2 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof  
3 applies to sentencing proceedings.

4 \* Sec. 4. AS 12.55.055(d) is amended to read:

5 (d) The court may offer a defendant convicted of an offense the option of  
6 performing community work in lieu of a sentence of imprisonment. Substitution of  
7 community work shall be at a rate of eight hours for each day of imprisonment. A  
8 court may not offer substitution of community work for any mandatory minimum  
9 period of imprisonment or for any period within the [OF A] presumptive range  
10 [TERM] of imprisonment for the offense.

11 \* Sec. 5. AS 12.55.088(c) is amended to read:

12 (c) A [NO] sentence may not be reduced or modified so as to result in a term  
13 of imprisonment that [WHICH] is less than the minimum [OR PRESUMPTIVE]  
14 sentence or within the presumptive range required by law for the original sentence.

15 \* Sec. 6. AS 12.55.100(a) is amended to read:

16 (a) While on probation and among the conditions of probation, the defendant  
17 may be required

18 (1) to pay a fine in one or several sums;

19 (2) to make restitution or reparation to aggrieved parties for actual  
20 damages or loss caused by the crime for which conviction was had, including  
21 compensation to a victim that is a nonprofit organization for the value of labor or  
22 goods provided by volunteers if the labor or goods were necessary to alleviate or  
23 mitigate the effects of the defendant's crime;

24 (3) to provide for the support of any persons for whose support the  
25 defendant is legally responsible;

26 (4) to perform community work in accordance with AS 12.55.055;

27 (5) to participate in or comply with the treatment plan of an inpatient  
28 or outpatient rehabilitation program specified by either the court or the defendant's  
29 probation officer that is related to the defendant's offense or to the defendant's  
30 rehabilitation; [AND]

31 (6) to satisfy the screening, evaluation, referral, and program

1 requirements of an agency authorized by the court to make referrals for rehabilitative  
2 treatment or to provide rehabilitative treatment; and

3 (7) if ordered by the court, to abide by additional conditions of  
4 probation imposed by the defendant's probation officer; an additional condition  
5 imposed by the probation officer must be provided in writing to the defendant;  
6 the additional condition is binding upon delivery until modified by the court; this  
7 paragraph does not require written notice of conditions relating to the day-to-day  
8 management of probationers, in which probation officers direct the activities of  
9 probationers to implement existing court-imposed conditions.

10 \* Sec. 7. AS 12.55.120 is amended by adding a new subsection to read:

11 (e) A sentence reviewed by the appellate court under this section and  
12 AS 22.07.020, or by the superior court under AS 22.10.020, or a sentence reviewed by  
13 petition accepted under court rules, may not be reversed as excessive, and the  
14 sentencing court is not required to make specific findings, if the sentence is within an  
15 applicable presumptive range set out in AS 12.55.125, or is a consecutive or partially  
16 consecutive sentence imposed in accordance with the minimum sentences set out in  
17 AS 12.55.127.

18 \* Sec. 8. AS 12.55.125(c) is amended to read:

19 (c) Except as provided in (i) of this section, a defendant convicted of a class A  
20 felony may be sentenced to a definite term of imprisonment of not more than 20 years,  
21 and shall be sentenced to a definite term within the following presumptive ranges  
22 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

23 (1) if the offense is a first felony conviction and does not involve  
24 circumstances described in (2) of this subsection, five to eight [FIVE] years;

25 (2) if the offense is a first felony conviction

26 [(A) OTHER THAN FOR MANSLAUGHTER] and the  
27 defendant possessed a firearm, used a dangerous instrument, or caused serious  
28 physical injury or death during the commission of the offense, or knowingly  
29 directed the conduct constituting the offense at a uniformed or otherwise  
30 clearly identified peace officer, fire fighter, correctional employee, emergency  
31 medical technician, paramedic, ambulance attendant, or other emergency

1 responder who was engaged in the performance of official duties at the time of  
2 the offense, seven to eleven [SEVEN] years;

3 [(B) FOR MANSLAUGHTER AND THE CONDUCT  
4 RESULTING IN THE CONVICTION WAS KNOWINGLY DIRECTED  
5 TOWARDS A CHILD UNDER THE AGE OF 16, SEVEN YEARS;

6 (C) FOR MANSLAUGHTER AND THE CONDUCT  
7 RESULTING IN THE CONVICTION INVOLVED DRIVING WHILE  
8 UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE,  
9 INHALANT, OR CONTROLLED SUBSTANCE, SEVEN YEARS;]

10 (3) if the offense is a second felony conviction, 10 to 14 [10] 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, 15 to 20 [15] years.

13 \* Sec. 9. AS 12.55.125(d) is amended to read:

14 (d) Except as provided in (i) of this section, a defendant convicted of a class B  
15 felony may be sentenced to a definite term of imprisonment of not more than 10 years,  
16 and shall be sentenced to a definite term within the following presumptive ranges  
17 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

20 (2) if the offense is a first felony conviction, the defendant violated  
21 AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

22 (3) if the offense is a second felony conviction, four to seven [FOUR]  
23 years;

24 (4) [(2)] if the offense is a third felony conviction, six to ten [SIX]  
25 years.

26 \* Sec. 10. AS 12.55.125(e) is amended to read:

27 (e) Except as provided in (i) of this section, a defendant convicted of a class C  
28 felony may be sentenced to a definite term of imprisonment of not more than five  
29 years, and shall be sentenced to a definite term within the following presumptive  
30 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

1 circumstances described in (4) of this subsection, zero to two years;

2 (2) if the offense is a second felony conviction, two to four [TWO]  
3 years;

4 (3) [(2)] if the offense is a third felony conviction, three to five  
5 [THREE] years;

6 (4) [(3)] if the offense is a first felony conviction, and the defendant  
7 violated AS 08.54.720(a)(15), one to two years [ONE YEAR].

8 \* Sec. 11. AS 12.55.125(g) is amended to read:

9 (g) If a defendant is sentenced under (c), (d), (e) [(d)(1), (d)(2), (e)(1), (e)(2),  
10 (e)(3)], or (i) of this section, except to the extent permitted under AS 12.55.155 -  
11 12.55.175,

12 (1) imprisonment may not be suspended under AS 12.55.080;

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

14 (3) terms of imprisonment may not be otherwise reduced.

15 \* Sec. 12. AS 12.55.125(i) is amended to read:

16 (i) A defendant convicted of

17 (1) sexual assault in the first degree or sexual abuse of a minor in the  
18 first degree may be sentenced to a definite term of imprisonment of not more than 40  
19 years and shall be sentenced to a definite term within the following presumptive  
20 ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

21 (A) if the offense is a first felony conviction and does not  
22 involve circumstances described in (B) of this paragraph, eight to twelve  
23 [EIGHT] years;

24 (B) if the offense is a first felony conviction and the defendant  
25 possessed a firearm, used a dangerous instrument, or caused serious physical  
26 injury during the commission of the offense, 12 to 16 [10] years;

27 (C) if the offense is a second felony conviction and does not  
28 involve circumstances described in (D) of this paragraph, 15 to 20 [15] years;

29 (D) if the offense is a second felony conviction and the  
30 defendant has a prior conviction for a sexual felony, 20 to 30 [20] years;

31 (E) if the offense is a third felony conviction and the defendant

1 is not subject to sentencing under (F) of this paragraph or (I) of this section, 25  
2 to 35 [25] years;

3 (F) if the offense is a third felony conviction, the defendant is  
4 not subject to sentencing under (I) of this section, and the defendant has two  
5 prior convictions for sexual felonies, 30 to 40 [30] years;

6 (2) attempt, conspiracy, or solicitation to commit sexual assault in the  
7 first degree or sexual abuse of a minor in the first degree may be sentenced to a  
8 definite term of imprisonment of not more than 30 years and shall be sentenced to a  
9 definite term within the following presumptive ranges [TERMS], subject to  
10 adjustment as provided in AS 12.55.155 - 12.55.175:

11 (A) if the offense is a first felony conviction and does not  
12 involve circumstances described in (B) of this paragraph, five to eight [FIVE]  
13 years;

14 (B) if the offense is a first felony conviction, and the defendant  
15 possessed a firearm, used a dangerous instrument, or caused serious physical  
16 injury during the commission of the offense, 10 to 14 [10] years;

17 (C) if the offense is a second felony conviction and does not  
18 involve circumstances described in (D) of this paragraph, 12 to 16 [10] years;

19 (D) if the offense is a second felony conviction and the  
20 defendant has a prior conviction for a sexual felony, 15 to 20 [15] years;

21 (E) if the offense is a third felony conviction, does not involve  
22 circumstances described in (F) of this paragraph, and the defendant is not  
23 subject to sentencing under (I) of this section, 15 to 25 [15] years;

24 (F) if the offense is a third felony conviction, the defendant is  
25 not subject to sentencing under (I) of this section, and the defendant has two  
26 prior convictions for sexual felonies, 20 to 30 [20] years;

27 (3) sexual assault in the second degree, sexual abuse of a minor in the  
28 second degree, unlawful exploitation of a minor, or distribution of child pornography  
29 may be sentenced to a definite term of imprisonment of not more than 20 years and  
30 shall be sentenced to a definite term within the following presumptive ranges  
31 [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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(A) if the offense is a first felony conviction, two to four years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) [(B)] of this paragraph, five to eight [FIVE] years;

(C) [(B)] if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 10 to 14 [10] years;

(D) [(C)] if the offense is a third felony conviction, does not involve circumstances described in (E) [(D)] of this paragraph, 10 to 14 [10] years;

(E) [(D)] if the offense is a third felony conviction, and the defendant has two prior convictions for sexual felonies, 15 to 20 [15] years;

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to a definite term within the following presumptive ranges [TERMS], subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, one to two years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) [(B)] of this paragraph, two to five [TWO] years;

(C) [(B)] if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, three to six [THREE] years;

(D) [(C)] if the offense is a third felony conviction and does not involve circumstances described in (E) [(D)] of this paragraph, three to six [THREE] years;

(E) [(D)] if the offense is a third felony conviction and the

1 defendant has two prior convictions for sexual felonies, six to ten [SIX] years

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

3 (n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i)  
4 of this section, the total term, made up of the active term of imprisonment plus any  
5 suspended term of imprisonment, must fall within the presumptive range, and the  
6 active term of imprisonment may not fall below the lower end of the presumptive  
7 range.

8 \* Sec. 14. AS 12.55.127(d) is amended by adding a new paragraph to read:

9 (4) "presumptive term" means the middle of the applicable  
10 presumptive range set out in AS 12.55.125.

11 \* Sec. 15. AS 12.55.145(a) is amended to read:

12 (a) For purposes of considering prior convictions in imposing sentence under

13 (1) AS 12.55.125(c), (d), or (e) [(d)(1), (d)(2), (e)(1), OR (e)(2)],

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

18 (B) a conviction in this or another jurisdiction of an offense  
19 having elements similar to those of a felony defined as such under Alaska law  
20 at the time the offense was committed is considered a prior felony conviction;

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

28 (2) AS 12.55.125(f),

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

1 (B) commission of and conviction for offenses relied on as  
2 prior most serious felony offenses must occur in the following order:  
3 conviction for the first offense must occur before commission of the second  
4 offense, and conviction for the second offense must occur before commission  
5 of the offense for which the defendant is being sentenced;

6 (3) AS 12.55.135(g),

7 (A) a prior conviction may not be considered if a period of five  
8 or more years has elapsed between the date of the defendant's unconditional  
9 discharge on the immediately preceding offense and commission of the present  
10 offense unless the prior conviction was for an unclassified or class A felony;

11 (B) a conviction in this or another jurisdiction of an offense  
12 having elements similar to those of a crime against a person or a crime  
13 involving domestic violence is considered a prior conviction;

14 (C) two or more convictions arising out of a single, continuous  
15 criminal episode during which there was no substantial change in the nature of  
16 the criminal objective are considered a single conviction unless the defendant  
17 was sentenced to consecutive sentences for the crimes; offenses committed  
18 while attempting to escape or avoid detection or apprehension after the  
19 commission of another offense are not part of the same criminal episode or  
20 objective;

21 (4) AS 12.55.125(i),

22 (A) a conviction in this or another jurisdiction of an offense  
23 having elements similar to those of a sexual felony is a prior conviction for a  
24 sexual felony;

25 (B) a felony conviction in another jurisdiction making it a  
26 crime to commit any lewd and lascivious act upon a child under the age of 16  
27 years, with the intent of arousing, appealing to, or gratifying the sexual desires  
28 of the defendant or the victim is a prior conviction for a sexual felony;

29 (C) two or more convictions arising out of a single, continuous  
30 criminal episode during which there was no substantial change in the nature of  
31 the criminal objective are considered a single conviction unless the defendant

1 was sentenced to consecutive sentences for the crimes; offenses committed  
2 while attempting to escape or avoid detection or apprehension after the  
3 commission of another offense are not part of the same criminal episode or  
4 objective.

5 \* Sec. 16. AS 12.55.155(a) is amended to read:

6 (a) Except as provided in (e) of this section, if [If] a defendant is convicted  
7 of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i)  
8 [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and

9 (1) the low end of the presumptive range [TERM] is four years or  
10 less, the court may impose any sentence below the presumptive range [DECREASE  
11 THE PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS THE  
12 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of  
13 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
14 for factors in aggravation;

15 (2) the low end of the presumptive range [TERM OF  
16 IMPRISONMENT] is more than four years, the court may impose a sentence below  
17 the presumptive range as long as the active term of imprisonment is not less than  
18 50 percent of the low end of the presumptive range [DECREASE THE  
19 PRESUMPTIVE TERM BY AN AMOUNT AS GREAT AS 50 PERCENT OF THE  
20 PRESUMPTIVE TERM] for factors in mitigation or may increase the active term of  
21 imprisonment [PRESUMPTIVE TERM] up to the maximum term of imprisonment  
22 for factors in aggravation.

23 \* Sec. 17. AS 12.55.155(b) is amended to read:

24 (b) Sentences [SENTENCE INCREMENTS AND DECREMENTS] under  
25 this section that are outside of the presumptive ranges set out in AS 12.55.125  
26 shall be based on the totality of the aggravating and mitigating factors set out in (c)  
27 and (d) of this section.

28 \* Sec. 18. AS 12.55.155(c) is amended to read:

29 (c) The following factors shall be considered by the sentencing court if  
30 proven in accordance with this section, and may allow imposition of a sentence  
31 above the presumptive range [AND MAY AGGRAVATE THE PRESUMPTIVE

1 TERMS] set out in AS 12.55.125:

2 (1) a person, other than an accomplice, sustained physical injury as a  
3 direct result of the defendant's conduct;

4 (2) the defendant's conduct during the commission of the offense  
5 manifested deliberate cruelty to another person;

6 (3) the defendant was the leader of a group of three or more persons  
7 who participated in the offense;

8 (4) the defendant employed a dangerous instrument in furtherance of  
9 the offense;

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

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

16 (7) a prior felony conviction considered for the purpose of invoking a  
17 [THE] presumptive range under [TERMS OF] this chapter was of a more serious  
18 class of offense than the present offense;

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

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

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

24 (11) the defendant committed the offense under [PURSUANT TO] an  
25 agreement that the defendant either pay or be paid for the commission of the offense,  
26 and the pecuniary incentive was beyond that inherent in the offense itself;

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

30 (13) the defendant knowingly directed the conduct constituting the  
31 offense at an active officer of t' e court or at an active or former judicial officer,

1 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,  
2 emergency medical technician, paramedic, ambulance attendant, or other emergency  
3 responder during or because of the exercise of official duties;

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

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

8 (16) the defendant's criminal conduct was designed to obtain  
9 substantial pecuniary gain and the risk of prosecution and punishment for the conduct  
10 is slight;

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

14 (18) the offense was a felony

15 (A) specified in AS 11.41 and was committed against a spouse,  
16 a former spouse, or a member of the social unit made up of [COMPRISED  
17 OF] those living together in the same dwelling as the defendant;

18 (B) specified in AS 11.41.410 - 11.41.458 and the defendant  
19 has engaged in the same or other conduct prohibited by a provision of  
20 AS 11.41.410 - 11.41.460 involving the same or another victim; or

21 (C) specified in AS 11.41 that is a crime involving domestic  
22 violence and was committed in the physical presence or hearing of a child  
23 under 16 years of age who was, at the time of the offense, living within the  
24 residence of the victim, the residence of the perpetrator, or the residence where  
25 the crime involving domestic violence occurred;

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

28 (20) the defendant was on furlough under AS 33.30 or on parole or  
29 probation for another felony charge or conviction that would be considered a prior  
30 felony conviction under AS 12.55.145(a)(1)(B);

31 (21) the defendant has a criminal history of repeated instances of

1 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,  
2 similar in nature to the offense for which the defendant is being sentenced under this  
3 section;

4 (22) the defendant knowingly directed the conduct constituting the  
5 offense at a victim because of that person's race, sex, color, creed, physical or mental  
6 disability, ancestry, or national origin;

7 (23) the defendant is convicted of an offense specified in AS 11.71 and

8 (A) the offense involved the delivery of a controlled substance  
9 under circumstances manifesting an intent to distribute the substance as part of  
10 a commercial enterprise; or

11 (B) at the time of the conduct resulting in the conviction, the  
12 defendant was caring for or assisting in the care of a child under 10 years of  
13 age;

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

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

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

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

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

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

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

30 (29) the defendant committed the offense for the benefit of, at the  
31 direction of, or in association with a criminal street gang;

1 (30) the defendant is convicted of an offense specified in AS 11.41.410  
2 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
3 the victim in furtherance of the offense with the intent to make the victim  
4 incapacitated; in this paragraph, "incapacitated" has the meaning given in  
5 AS 11.41.470;

6 (31) the defendant's prior criminal history includes convictions for  
7 five or more crimes in this or another jurisdiction that are class A misdemeanors  
8 under the law of this state, or having elements similar to a class A misdemeanor;  
9 two or more convictions arising out of a single continuous episode are considered  
10 a single conviction; however, an offense is not a part of a continuous episode if  
11 committed while attempting to escape or resist arrest or if it is an assault upon a  
12 uniformed or otherwise clearly identified peace officer; notice and denial of  
13 convictions are governed by AS 12.55.145(b), (c), and (d).

14 \* Sec. 19. AS 12.55.155(d) is amended to read:

15 (d) The following factors shall be considered by the sentencing court if  
16 proven in accordance with this section, and may allow imposition of a sentence  
17 below the presumptive range [AND MAY MITIGATE THE PRESUMPTIVE  
18 TERMS] set out in AS 12.55.125:

19 (1) the offense was principally accomplished by another person, and  
20 the defendant manifested extreme caution or sincere concern for the safety or well-  
21 being of the victim;

22 (2) the defendant, although an accomplice, played only a minor role in  
23 the commission of the offense;

24 (3) the defendant committed the offense under some degree of duress,  
25 coercion, threat, or compulsion insufficient to constitute a complete defense, but that  
26 [WHICH] significantly affected the defendant's conduct;

27 (4) the conduct of a youthful defendant was substantially influenced by  
28 another person more mature than the defendant;

29 (5) the conduct of an aged defendant was substantially a product of  
30 physical or mental infirmities resulting from the defendant's age;

31 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the

1 defendant acted with serious provocation from the victim;

2 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,  
3 the victim provoked the crime to a significant degree;

4 (8) [REPEALED

5 (9) the conduct constituting the offense was among the least serious  
6 conduct included in the definition of the offense;

7 (9) [(10)] before the defendant knew that the criminal conduct had  
8 been discovered, the defendant fully compensated or made a good faith effort to fully  
9 compensate the victim of the defendant's criminal conduct for any damage or injury  
10 sustained;

11 (10) [(11)] the defendant was motivated to commit the offense solely  
12 by an overwhelming compulsion to provide for emergency necessities for the  
13 defendant's immediate family;

14 (11) [(12)] the defendant assisted authorities to detect, apprehend, or  
15 prosecute other persons who committed an offense;

16 (12) [(13)] the facts surrounding the commission of the offense and  
17 any previous offenses by the defendant establish that the harm caused by the  
18 defendant's conduct is consistently minor and inconsistent with the imposition of a  
19 substantial period of imprisonment;

20 (13) [(14)] the defendant is convicted of an offense specified in  
21 AS 11.71 and the offense involved small quantities of a controlled substance;

22 (14) [(15)] the defendant is convicted of an offense specified in  
23 AS 11.71 and the offense involved the distribution of a controlled substance, other  
24 than a schedule IA controlled substance, to a personal acquaintance who is 19 years of  
25 age or older for no profit;

26 (15) [(16)] the defendant is convicted of an offense specified in  
27 AS 11.71 and the offense involved the possession of a small amount of a controlled  
28 substance for personal use in the defendant's home;

29 (16) [(17)] in a conviction for assault or attempted assault or for  
30 homicide or attempted homicide, the defendant acted in response to domestic violence  
31 perpetrated by the victim against the defendant and the domestic violence consisted of

1 aggravated or repeated instances of assaultive behavior.

2 \* **Sec. 20.** AS 12.55.155(e) is amended to read:

3 (e) If a factor in aggravation is a necessary element of the present offense, or  
4 requires the imposition of a sentence within the presumptive range [TERM] under  
5 AS 12.55.125(c)(2), that factor may not be used to impose a sentence above the high  
6 end of [AGGRAVATE] the presumptive range [TERM]. If a factor in mitigation is  
7 raised at trial as a defense reducing the offense charged to a lesser included offense,  
8 that factor may not be used to impose a sentence below the low end of [MITIGATE]  
9 the presumptive range [TERM].

10 \* **Sec. 21.** AS 12.55.155(f) is amended to read:

11 (f) If the state seeks to establish a factor in aggravation at sentencing

12 (1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this  
13 section, or if the defendant seeks to establish a factor in mitigation at sentencing,  
14 written notice must be served on the opposing party and filed with the court not later  
15 than 10 days before the date set for imposition of sentence; the factors [. FACTORS]  
16 in aggravation listed in this paragraph, and factors in mitigation must be established  
17 by clear and convincing evidence before the court sitting without a jury; all [. ALL]  
18 findings must be set out with specificity;

19 (2) other than one listed in (1) of this subsection, the factor shall be  
20 presented to a trial jury under procedures set by the court, unless the defendant  
21 waives trial by jury, stipulates to the existence of the factor, or consents to have  
22 the factor proven under procedures set out in (1) of this subsection; a factor in  
23 aggravation presented to a jury is established if proved beyond a reasonable  
24 doubt; written notice of the intent to establish a factor in aggravation must be  
25 served on the defendant and filed with the court

26 (A) 10 days before trial, or at another time specified by the  
27 court;

28 (B) within 48 hours, or at a time specified by the court, if  
29 the court instructs the jury about the option to return a verdict for a lesser  
30 included offense; or

31 (C) five days before entering a plea that results in a finding

1 of guilt, or at another time specified by the court.

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

3 (a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or  
4 (i) [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), OR (i)] and the court finds by  
5 clear and convincing evidence that manifest injustice would result from failure to  
6 consider relevant aggravating or mitigating factors not specifically included in  
7 AS 12.55.155 or from imposition of a sentence within the presumptive range  
8 [TERM], whether or not adjusted for aggravating or mitigating factors, the court shall  
9 enter findings and conclusions and cause a record of the proceedings to be transmitted  
10 to a three-judge panel for sentencing under AS 12.55.175.

11 \* **Sec. 23.** AS 12.55.175(b) is amended to read:

12 (b) Upon receipt of a record of proceedings under AS 12.55.165, the three-  
13 judge panel shall consider all pertinent files, records, and transcripts, including the  
14 findings and conclusions of the judge who originally heard the matter. The panel may  
15 hear oral testimony to supplement the record before it. If the panel supplements the  
16 record, the panel shall permit the victim to testify before the panel. If the panel finds  
17 that manifest injustice would result from failure to consider relevant aggravating or  
18 mitigating factors not specifically included in AS 12.55.155 or from imposition of a  
19 sentence within the presumptive range [TERM], whether or not adjusted for  
20 aggravating or mitigating factors, it shall sentence the defendant in accordance with  
21 this section. If the panel does not find that manifest injustice would result, it shall  
22 remand the case to the sentencing court, with a written statement of its findings and  
23 conclusions, for sentencing under AS 12.55.125.

24 \* **Sec. 24.** AS 12.55.175(e) is amended to read:

25 (e) If the three-judge panel determines under (b) of this section that manifest  
26 injustice would result from imposition of a sentence within the presumptive range  
27 [TERM] and the panel also finds that the defendant has an exceptional potential for  
28 rehabilitation and that a sentence of less than the presumptive range [TERM] should  
29 be imposed because of the defendant's exceptional potential for rehabilitation, the  
30 panel

31 (1) shall sentence the defendant within [TO] the presumptive range

1 [TERM] required under AS 12.55.125 or as permitted under AS 12.55.155:

2 (2) shall order the defendant under AS 12.55.015 to engage in  
3 appropriate programs of rehabilitation; and

4 (3) may provide that the defendant is eligible for discretionary parole  
5 under AS 33.16.090 during the second half of the sentence imposed under this  
6 subsection if the defendant successfully completes all rehabilitation programs ordered  
7 under (2) of this subsection.

8 \* **Sec. 25.** AS 12.55.185 is amended by adding a new paragraph to read:

9 (18) "active term of imprisonment" has the meaning given in  
10 AS 12.55.127.

11 \* **Sec. 26.** AS 33.05.070 is amended by adding new subsections to read:

12 (c) At any time within the probation period, a police officer certified by the  
13 Alaska Police Standards Council may detain a probationer if the police officer has  
14 reasonable suspicion that the probationer has recently violated or may imminently  
15 violate a probation condition relating to one of the topics set out in (d) of this section.  
16 The police officer may also arrest the probationer without a warrant if the police  
17 officer has probable cause to believe that the probationer has violated a probation  
18 condition relating to one of the topics set out in (d) of this section.

19 (d) The conditions that permit a police officer to detain or arrest a probationer  
20 or parolee without a warrant under AS 33.16.240 and (c) of this section are those  
21 conditions imposed by the court, or the parole board, relating to

- 22 (1) geographic limitations on the probationer's movements;  
23 (2) possessing or consuming controlled substances under state or  
24 federal law;  
25 (3) possessing firearms;  
26 (4) possessing or consuming alcoholic beverages, or being in a place  
27 where they are sold or served;  
28 (5) operating or driving a motor vehicle; or  
29 (6) other conduct that creates an imminent public danger or threatens  
30 serious harm to persons or property.

31 \* **Sec. 27.** AS 33.16.085(a) is amended to read:

1 (a) Notwithstanding a presumptive, mandatory, or mandatory minimum term  
2 or sentence a prisoner may be serving or any restriction on parole eligibility under  
3 AS 12.55, a prisoner who is serving a term of at least 181 days, may, upon application  
4 by the prisoner or the commissioner, be released by the board on special medical  
5 parole if the board determines that

6 (1) the prisoner has not been convicted of an offense under  
7 AS 11.41.410 - 11.41.425 or 11.41.434 - 11.41.438 and the prisoner is severely  
8 medically or cognitively disabled as certified in writing by a physician licensed under  
9 AS 08.64

10 (2) a reasonable probability exists that

11 (A) the prisoner will live and remain at liberty without  
12 violating any laws or conditions imposed by the board;

13 (B) because of the prisoner's severe medical or cognitive  
14 disability, the prisoner will not pose a threat of harm to the public if released  
15 on parole; and

16 (C) release of the prisoner on parole would not diminish the  
17 seriousness of the crime;

18 (3) the prisoner

19 (A) was not suffering from the severe medical or cognitive  
20 disability at the time the prisoner committed the offense or parole or probation  
21 violation for which the prisoner is presently incarcerated; or

22 (B) was suffering from the severe medical or cognitive  
23 disability at the time the prisoner committed the offense or parole or probation  
24 violation for which the prisoner is presently incarcerated and the medical or  
25 cognitive disability has progressed so that the likelihood of the prisoner's  
26 committing the same or a similar offense is low;

27 (4) the care and supervision that the prisoner requires can be provided  
28 in a more medically appropriate or cost-effective manner than by the department;

29 (5) the prisoner is incapacitated to an extent that incarceration does not  
30 impose significant additional restrictions on the prisoner;

31 (6) the prisoner is likely to remain subject to the severe medical or

1 cognitive disability throughout the entire period of parole or to die and there is no  
2 reasonable expectation that the prisoner's medical or cognitive disability will improve  
3 noticeably; and

4 (7) an appropriate discharge plan has been formulated that addresses  
5 basic life domains of the prisoner, including care coordination, housing, eligibility for  
6 public benefits, and health care, including necessary medication.

7 \* **Sec. 28.** AS 33.16.090 is repealed and reenacted to read:

8 **Sec. 33.16.090. Eligibility for discretionary parole and minimum terms to**  
9 **be served.** (a) A prisoner sentenced to an active term of imprisonment of at least 181  
10 days may, in the discretion of the board, be released on discretionary parole if the  
11 prisoner has served the amount of time specified under (b) of this section, except that

12 (1) a prisoner sentenced to one or more mandatory 99-year terms under  
13 AS 12.55.125(a) or one or more definite terms under AS 12.55.125(f) is not eligible  
14 for consideration for discretionary parole;

15 (2) a prisoner is not eligible for consideration of discretionary parole if  
16 made ineligible by order of a court under AS 12.55.115;

17 (3) a prisoner imprisoned under AS 12.55.086 is not eligible for  
18 discretionary parole unless the actual term of imprisonment is more than one year.

19 (b) A prisoner eligible under (a) of this section who is sentenced

20 (1) to a single sentence under AS 12.55.125(a) or (b) may not be  
21 released on discretionary parole until the prisoner has served the mandatory minimum  
22 term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment  
23 imposed, or any term set under AS 12.55.115, whichever is greatest;

24 (2) to a single sentence within or below a presumptive range set out in  
25 AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i), and has not been allowed by the  
26 three-judge panel under AS 12.55.175 to be considered for discretionary parole  
27 release, may not be released on discretionary parole until the prisoner has served the  
28 term imposed, less good time earned under AS 33.20.010;

29 (3) to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and  
30 (4), or (i), and has been allowed by the three-judge panel under AS 12.55.175 to be  
31 considered for discretionary parole release during the second half of the sentence, may

1 not be released on discretionary parole until

2 (A) the prisoner has served that portion of the active term of  
3 imprisonment required by the three-judge panel; and

4 (B) in addition to the factors set out in AS 33.16.100(a), the  
5 board determines that

6 (i) the defendant has successfully completed all  
7 rehabilitation programs ordered by the three-judge panel that were  
8 made available to the prisoner; and

9 (ii) the prisoner would not constitute a danger to the  
10 public if released on parole;

11 (4) to a single enhanced sentence under AS 12.55.155(a) that is above  
12 the applicable presumptive range, may not be released on discretionary parole until the  
13 prisoner has served the greater of the following:

14 (A) an amount of time, less good time earned under  
15 AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth  
16 of the amount of time above the presumptive range; or

17 (B) any term set under AS 12.55.115;

18 (5) to a single sentence under any other provision of law, may not be  
19 released on discretionary parole until the prisoner has served at least one-fourth of the  
20 active term of imprisonment, any mandatory minimum sentence imposed under any  
21 provision of law, or any term set under AS 12.55.115, whichever is greatest;

22 (6) to concurrent sentences, may not be released on discretionary  
23 parole until the prisoner has served the greatest of

24 (A) any mandatory minimum sentence or sentences imposed  
25 under any provision of law;

26 (B) any term set under AS 12.55.115; or

27 (C) the amount of time that is required to be served under (1) -  
28 (5) of this subsection for the sentence imposed for the primary crime, had that  
29 been the only sentence imposed;

30 (7) to consecutive or partially consecutive sentences, may not be  
31 released on discretionary parole until the prisoner has served the greatest of

1 (A) the composite total of any mandatory minimum sentence or  
2 sentences imposed under any provision of law, including AS 12.55.127;

3 (B) any term set under AS 12.55.115; or

4 (C) the amount of time that is required to be served under (1) -  
5 (5) of this subsection for the sentence imposed for the primary crime, had that  
6 been the only sentence imposed, plus one-quarter of the composite total of the  
7 active term of imprisonment imposed as consecutive or partially consecutive  
8 sentences imposed for all crimes other than the primary crime.

9 (c) As used in this section,

10 (1) "active term of imprisonment" has the meaning given in  
11 AS 12.55.185;

12 (2) "primary crime" has the meaning given in AS 12.55.127.

13 \* Sec. 29. AS 33.16.100 is amended by adding a new subsection to read:

14 (e) If the parole board considers an application for discretionary parole, and  
15 denies parole because the prisoner does not meet the standards in (a) of this section,  
16 the board may make a prisoner ineligible for further consideration of discretionary  
17 parole, or may require that additional time be served before the prisoner is again  
18 eligible for consideration for discretionary parole.

19 \* Sec. 30. AS 33.16.240(c) is amended to read:

20 (c) In addition to the powers granted to a police officer under (g) of this  
21 section, a [A] parole officer may, without a warrant, arrest a parolee for a violation of  
22 parole only if there is danger to the public, if there is a likelihood that the parolee will  
23 flee, or if the parolee committed a crime in the presence of the parole officer.

24 \* Sec. 31. AS 33.16.240 is amended by adding a new subsection to read:

25 (g) At any time within the period of parole supervision, a police officer  
26 certified by the Alaska Police Standards Council may detain a parolee if the officer  
27 has reasonable suspicion that the person has recently violated or may imminently  
28 violate a parole condition relating to one of the topics set out in AS 33.05.070(d). The  
29 officer may also arrest the parolee without a warrant if the officer has probable cause  
30 to believe that the person has violated a parole condition relating to one of the topics  
31 set out in AS 33.05.070(d).

1 \* Sec. 32. AS 12.55.125(k); AS 33.16.100(c) and 33.16.100(d) are repealed.

2 \* Sec. 33. The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 APPLICABILITY. Sections 1, 4, 6, 26, and 29 - 31 of this Act apply to offenses  
5 committed before, on, or after the effective date of this Act. Sections 2, 3, 5, 7 - 25, and 27 -  
6 28 of this Act apply to offenses committed on or after the effective date of this Act.  
7 References to prior offenses or convictions in secs. 8 - 21 of this Act include offenses  
8 committed before, on, or after the effective date of this Act.

9 \* Sec. 34. This Act takes effect July 1, 2005.