



LAWS OF ALASKA

1996

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SCS CSHB 38(FIN) am S

Chapter No.

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AN ACT

Relating to criminal sentencing; relating to good time credit; relating to the availability for good time credit for offenders convicted of certain first degree murders; relating to definite sentences, parole, good time credit, pardon, commutation of sentence, modification or reduction of sentence, reprieve, furlough, and service of sentence at a correctional restitution center for offenders with at least three serious felony convictions; and amending Alaska Rule of Criminal Procedure 35.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: March 29, 1996

Actual Effective Date: June 27, 1996

AN ACT

1 Relating to criminal sentencing; relating to good time credit; relating to the availability for
2 good time credit for offenders convicted of certain first degree murders; relating to definite
3 sentences, parole, good time credit, pardon, commutation of sentence, modification or
4 reduction of sentence, reprieve, furlough, and service of sentence at a correctional restitution
5 center for offenders with at least three serious felony convictions; and amending Alaska Rule
6 of Criminal Procedure 35.

7

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

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

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

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

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1 (4) the legislature has a right and the responsibility to determine when to
2 impose extensive periods of confinement;

3 (5) crimes against the person are generally more serious than crimes against
4 property, crimes against the public health, and other crimes, since crimes against the person
5 threaten the victim's safety and dignity and often result in physical injury, emotional trauma,
6 or both;

7 (6) the most serious crimes against the person are those classified as
8 unclassified and class A felonies;

9 (7) although most of the crimes against the person are set out in AS 11.41, two
10 class A felony offenses against the person are found elsewhere; arson in the first degree,
11 AS 11.46.400(a), is a crime against the person since it is primarily aimed at protecting the
12 safety of persons rather than property; promoting prostitution in the first degree is a crime
13 against the person since it is primarily designed to deal with the coercive aspects that may be
14 involved in prostitution; these coercive aspects threaten the safety of persons;
15 AS 11.66.110(a)(2), which requires proof that a person other than a patron induced or caused
16 a person under 16 years of age to engage in prostitution, is particularly serious due to the
17 youth of the victim.

18 (b) By sentencing three-time, most serious offenders to prison for extensive periods
19 without the possibility of parole, the legislature intends to

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

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

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

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

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

26 (e) Except as provided in (g) and (h) of this section, if the defendant has been
27 convicted of two or more crimes, sentences of imprisonment shall run consecutively.
28 If the defendant is imprisoned upon a previous judgment of conviction for a crime, the
29 judgment shall provide that the imprisonment commences at the expiration of the term
30 imposed by the previous judgment. Nothing in AS 12.55.125(a) or (l) limits the court's
31 ability to impose consecutive sentences.

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

2 (c) A defendant convicted of a class A felony may be sentenced to a definite
3 term of imprisonment of not more than 20 years, and shall be sentenced to the
4 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
5 12.55.175:

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

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

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

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

18 * Sec. 4. AS 12.55.125(f) is amended to read:

19 (f) If a defendant is sentenced under (a) or (b) of this section,

20 (1) imprisonment for the prescribed minimum **or mandatory** term may
21 not be suspended under AS 12.55.080;

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

23 (3) imprisonment for the prescribed minimum **or mandatory** term may
24 not be [OTHERWISE] reduced, **except as provided in (j) of this section**.

25 * Sec. 5. AS 12.55.125(i) is amended to read:

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

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

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

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

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

7 * Sec. 6. AS 12.55.125(j) is amended to read:

8 (j) A defendant sentenced to a **(1)** mandatory term of imprisonment of 99 years
9 under (a) of this section may apply **once** for a modification or reduction of sentence
10 under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory
11 term without consideration of good time earned under AS 33.20.010, **or (2) definite**
12 **term of imprisonment under (l) of this section may apply once for a modification**
13 **or reduction of sentence under the Alaska Rules of Criminal Procedure after**
14 **servicing the greater of (A) one-half of the definite term or (B) 30 years. A**
15 **defendant may not file and a court may not entertain more than one motion for**
16 **modification or reduction of a sentence subject to this subsection, regardless of**
17 **whether or not the court granted or denied a previous motion.**

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

19 (l) Notwithstanding any other provision of law, a defendant convicted of an
20 unclassified or class A felony offense, and not subject to a mandatory 99-year sentence
21 under (a) of this section, shall be sentenced to a definite term of imprisonment of at
22 least 40 years but not more than 99 years when the defendant has been previously
23 convicted of two or more most serious felonies and the prosecuting attorney has filed
24 a notice of intent to seek a definite sentence under this subsection at the time the
25 defendant was arraigned in superior court. If a defendant is sentenced to a definite
26 term under this section,

27 (1) imprisonment for the prescribed definite term may not be suspended
28 under AS 12.55.080;

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

30 (3) imprisonment for the prescribed definite term may not be reduced,
31 except as provided in (j) of this section.

1 * Sec. 8. AS 12.55.145(a) is amended to read:

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

3 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

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

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

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

20 (2) AS 12.55.125(l),

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

24 (B) commission of and conviction for offenses relied on as
25 prior most serious felony offenses must occur in the following order:
26 conviction for the first offense must occur before commission of the second
27 offense, and conviction for the second offense must occur before
28 commission of the offense for which the defendant is being sentenced.

29 * Sec. 9. AS 12.55.145(c) is amended to read:

30 (c) The defendant shall file with the court and serve on the prosecuting
31 attorney notice of denial, consisting of a concise statement of the grounds relied

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1 upon and that may be supported by affidavit or other documentary evidence, no
2 later than 10 days before the date set for the imposition of sentence if [IF] the
3 defendant

4 (1) denies

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

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

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

10 (i) felony defined as such under Alaska law;

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

12 law;

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

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

17 (2) [IF THE DEFENDANT] alleges that two or more purportedly
18 separate prior convictions should be considered a single conviction under (a)(1)(C)
19 [(a)(3)] of this section [, THE DEFENDANT SHALL FILE WITH THE COURT AND
20 SERVE ON THE PROSECUTING ATTORNEY NOTICE OF DENIAL NO LATER
21 THAN 10 DAYS BEFORE THE DATE SET FOR IMPOSITION OF SENTENCE.
22 THE NOTICE OF DENIAL MUST INCLUDE A CONCISE STATEMENT OF THE
23 GROUNDS RELIED UPON AND MAY BE SUPPORTED BY AFFIDAVIT OR
24 OTHER DOCUMENTARY EVIDENCE].

25 * Sec. 10. AS 12.55.145(d) is amended to read:

26 (d) Matters alleged in a notice of denial shall be heard by the court sitting
27 without a jury. If the defendant introduces substantial evidence that the defendant is
28 not the person named in a prior judgment of conviction, that the judgment is not
29 authentic, that the conviction did not occur within the period specified in (a)(1)(A)
30 [(a)(1)] of this section, [OR] that a conviction should not be considered a prior felony
31 conviction under (a)(1)(B) [(a)(2)] of this section or a prior most serious felony

1 conviction under (a)(2)(A) of this section, or that a previous conviction did not
 2 occur in the order required under (a)(2)(B) of this section, then the burden is on
 3 the state to prove the contrary beyond a reasonable doubt. The burden of proof that
 4 two or more convictions should be considered a single conviction under (a)(1)(C)
 5 [(a)(3)] of this section is on the defendant by clear and convincing evidence.

6 * Sec. 11. AS 12.55.145 is amended by adding a new subsection to read:

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

10 * Sec. 12. AS 12.55.155(c)(20) is amended to read:

11 (20) the defendant was on furlough under AS 33.30 or on parole or
 12 probation for another felony charge or conviction that would be considered a prior
 13 felony conviction under AS 12.55.145(a)(1)(B) [AS 12.55.145(a)(2)];

14 * Sec. 13. AS 12.55.185 is amended by adding a new paragraph to read:

15 (14) "most serious felony" means

16 (A) arson in the first degree, promoting prostitution in the first
 17 degree under AS 11.66.110(a)(2), or any unclassified or class A felony
 18 prescribed under AS 11.41; or

19 (B) an attempt, or conspiracy to commit, or criminal solicitation
 20 under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41.

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

22 (b) Except as provided in (e) of this section, a prisoner is not eligible for
 23 discretionary parole during the term of a presumptive sentence; however, a prisoner
 24 is eligible for discretionary parole during a term of sentence enhancement imposed
 25 under AS 12.55.155(a) or during the term of a consecutive or partially consecutive
 26 presumptive sentence imposed under AS 12.55.025(e) or (g). A prisoner sentenced to
 27 a mandatory 99-year term under AS 12.55.125(a) or a definite term under
 28 AS 12.55.125(l) is not eligible for discretionary parole during the entire term.

29 * Sec. 15. AS 33.20.010(a) is amended to read:

30 (a) Notwithstanding [EXCEPT AS PROVIDED IN (b) OF THIS SECTION
 31 AND NOTWITHSTANDING] AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner

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1 convicted of an offense against the state or a political subdivision of the state and
2 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction
3 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner
4 follows the rules of the correctional facility in which the prisoner is confined. A
5 prisoner is not eligible for a good time deduction if the prisoner has been
6 sentenced to a

7 (1) mandatory 99-year term of imprisonment under AS 12.55.125(a)
8 after the effective date of this Act; or

9 (2) definite term under AS 12.55.125(l).

10 * Sec. 16. AS 33.30.101 is amended by adding a new subsection to read:

11 (c) The regulations adopted under (a) of this section may not provide for the
12 granting of a furlough of any type to a prisoner sentenced to a mandatory 99-year term
13 of imprisonment under AS 12.55.125(a) or a definite term of imprisonment under
14 AS 12.55.125(l) unless the prisoner is at all times in the direct custody of a
15 correctional officer while the prisoner is away from the correctional facility.

16 * Sec. 17. AS 33.30.161(b) is amended to read:

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

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

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

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

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

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

26 (4) may not have been convicted of an offense under AS 11.41.410 -
27 11.41.470 or an offense in the state or another jurisdiction having elements
28 substantially identical to an offense under AS 11.41.410 - 11.41.470; and

29 (5) may not have been sentenced to a

30 (A) mandatory 99-year term of imprisonment under
31 AS 12.55.125(a); or

1 (B) definite term of imprisonment under AS 12.55.125(l).

2 * Sec. 18. AS 33.20.010(b) is repealed.

3 * Sec. 19. APPLICABILITY. References to prior or previous convictions in this Act apply
4 to all convictions occurring before, on, or after the effective date of this Act.

5 * Sec. 20. AS 12.55.125(j), amended by sec. 6 of this Act, has the effect of amending
6 Alaska Rule of Criminal Procedure 35 by

7 (1) limiting the number of motions for modification or reduction of sentence
8 that may be filed under the authority of that section; and

9 (2) permitting a court to reduce or modify a definite sentence of imprisonment
10 imposed under AS 12.55.125(l) only after the defendant has served the greater of one-half of
11 the definite term or 30 years.