

CS FOR SENATE BILL NO. 85(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/11/03

Referred: Judiciary

Sponsor(s): SENATORS FRENCH, Ben Stevens, Dyson, Bunde, Guess, Ellis, Elton, Lincoln, Davis, Cowdery

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sentencing and to the earning of good time deductions for certain**
2 **sexual offenses."**

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

4 * **Section 1.** AS 12.55.125(c) is amended to read:

5 (c) **Except as provided in (i) of this section, a** [A] defendant convicted of a
6 class A felony may be sentenced to a definite term of imprisonment of not more than
7 20 years, and shall be sentenced to the following presumptive terms, subject to
8 adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

12 (A) other than for manslaughter and the defendant possessed a
13 firearm, used a dangerous instrument, or caused serious physical injury during
14 the commission of the offense, or knowingly directed the conduct constituting

the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

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

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

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

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

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

(2) if the offense is a third felony conviction, six years.

[(3) REPEALED]

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

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

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

(2) if the offense is a third felony conviction, three years; [.]

(3) [REPEALED]

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year.

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

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3) [(e)(4)], 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. 5.** 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 40 [30] years [,] and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) [(1)] if the offense is a first felony conviction and does not involve circumstances described in (B) [(2)] of this paragraph [SUBSECTION], eight years;

(B) [(2)] 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, 10 years;

(C) [(3)] if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 15 years;

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

(E) [(4)] if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 25 years;

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

(2) attempt, conspiracy, or solicitation to commit 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 30 years and shall be sentenced to the following presumptive 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, five 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, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 10 years;

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

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

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

(3) 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 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a second felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

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

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

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

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

8 **(A) if the offense is a second felony conviction and does not**
 9 **involve circumstances described in (B) of this paragraph, two years;**

10 **(B) if the offense is a second felony conviction and the**
 11 **defendant has a prior conviction for a sexual felony, three years;**

12 **(C) if the offense is a third felony conviction and does not**
 13 **involve circumstances described in (D) of this paragraph, three years;**

14 **(D) if the offense is a third felony conviction and the**
 15 **defendant has two prior convictions for sexual felonies, six years.**

16 * **Sec. 6.** AS 12.55.145(a) is amended to read:

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

18 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), **or** (e)(2)[, OR (i),]

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

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

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

1 objective;

2 (2) AS 12.55.125(l),

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

6 (B) commission of and conviction for offenses relied on as
7 prior most serious felony offenses must occur in the following order:
8 conviction for the first offense must occur before commission of the second
9 offense, and conviction for the second offense must occur before commission
10 of the offense for which the defendant is being sentenced;

11 (3) AS 12.55.135(g),

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

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

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

26 **(4) AS 12.55.125(i),**

27 **(A) a conviction in this or another jurisdiction of an offense**
28 **having elements similar to those of a sexual felony is a prior conviction for**
29 **a sexual felony;**

30 **(B) a felony conviction in another jurisdiction making it a**
31 **crime to commit any lewd and lascivious act upon a child under the age of**

16 years, with the intent of arousing, appealing to, or gratifying the sexual desires of the defendant or the victim is a prior conviction for a sexual felony;

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

* **Sec. 7.** AS 12.55.155a is amended to read:

(a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3) [(e)(4)], or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

* **Sec. 8.** AS 12.55.165(a) is amended to read:

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3) [(e)(4)], 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 the presumptive 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. 9.** AS 12.55.185 is amended by adding a new paragraph to read:

(17) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, and felony attempt, conspiracy, or solicitation to commit those crimes.

* **Sec. 10.** AS 33.20.010(a) is amended to read:

(a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the state or a political subdivision of the state and sentenced to a term of imprisonment that exceeds three days is entitled to a deduction of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced [TO A]

(1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996; [OR]

(2) to a definite term under AS 12.55.125(l); or

(3) for a sexual felony under AS 12.55.125(i) and has one or more prior sexual felony convictions as determined under AS 12.55.145(a)(4).

* **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) The changes made to AS 12.55.125 and 12.55.145 by this Act apply to sentencings for offenses committed on or after the effective date of this Act. All references to prior or previous convictions in AS 12.55.125 and 12.55.145, as amended by this Act, apply to convictions occurring before, on, or after the effective date of this Act.

(b) The changes made to the earning of good time deductions under AS 33.20.010 apply to offenses occurring on or after the effective date of this Act. References to prior convictions under AS 33.20.010(a) apply to offenses occurring before, on, or after the effective date of this Act.