

SENATE BILL NO. 186

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 2/1/12

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to persons found guilty but mentally ill; relating to sentencing
2 procedures for factors that may increase the presumptive range or affect mandatory
3 parole eligibility; relating to the granting of probation; relating to procedures for
4 finding aggravating factors at sentencing; amending Rule 32.1, Alaska Rules of
5 Criminal Procedure; and providing for an effective date."

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

7 * **Section 1.** AS 12.47.040(b) is amended to read:

8 (b) To return a verdict under (a)(4) of this section, the fact finder [JURY]
9 must find beyond a reasonable doubt that the defendant committed the crime and
10 [FIND BY A PREPONDERANCE OF THE EVIDENCE] that, when the defendant
11 committed the crime, the defendant was guilty but mentally ill as defined in
12 AS 12.47.030.

13 * **Sec. 2.** AS 12.47.060(a) is amended to read:

1 (a) In a prosecution for a crime when the affirmative defense of insanity is not
 2 raised and when evidence of mental disease or defect of the defendant is not admitted
 3 at trial under AS 12.47.020, [AND THE DEFENDANT IS CONVICTED OF A
 4 CRIME,] the defendant or [,] the prosecuting attorney [, OR THE COURT ON ITS
 5 OWN MOTION] may raise the issue of whether the defendant is guilty but mentally
 6 ill. **A party that seeks a post-conviction determination of guilty but mentally ill**
 7 **must give notice 10 days before trial of intent to do so; however, this deadline is**
 8 **waived if the opposing party presents evidence or argument at trial tending to**
 9 **show that the defendant may be guilty but mentally ill.** A hearing must be held on
 10 this issue [AT OR] before the **same fact finder that returned the verdict of guilty**
 11 **under procedures set by the court. In cases decided by a jury, at the request of**
 12 **the defendant and with the concurrence of the prosecuting attorney, the court**
 13 **may decide the issue. A waiver of consideration by a jury must be in writing and**
 14 **in person before the court** [SENTENCING HEARING]. At the hearing, the **fact**
 15 **finder** [COURT] shall determine whether the defendant has been shown to be guilty
 16 but mentally ill **beyond a reasonable doubt, considering** [BY A
 17 PREPONDERANCE OF THE] evidence presented at the hearing and any evidence
 18 relevant to the issue that was presented at trial.

19 * **Sec. 3.** AS 12.47.060(b) is amended to read:

20 (b) If the **fact finder** [COURT] finds that a defendant is guilty but mentally
 21 ill, **the court** [IT] shall sentence the defendant as provided by law and shall enter the
 22 finding of guilty but mentally ill as part of the judgment.

23 * **Sec. 4.** AS 12.55.025(i) is amended to read:

24 (i) Except as **otherwise** provided **in this chapter** [BY AS 12.55.125(a)(3),
 25 12.55.145(d), 12.55.155(f), AND 12.55.165], the preponderance of the evidence
 26 standard of proof applies to sentencing proceedings.

27 * **Sec. 5.** AS 12.55.090(b) is amended to read:

28 (b) **Except as otherwise provided in (f) of this section, the** [THE] court may
 29 revoke or modify any condition of probation [,] or may change the period of
 30 probation.

31 * **Sec. 6.** AS 12.55.090 is amended by adding a new subsection to read:

1 (f) Unless the defendant and the prosecuting authority agree at the probation
 2 revocation proceeding or other proceeding, the court may not reduce the specific
 3 period of probation, or the specific term of suspended incarceration except by the
 4 amount of incarceration imposed for a probation violation, if

5 (1) the sentence was imposed in accordance with a plea agreement
 6 under Rule 11, Alaska Rules of Criminal Procedure; and

7 (2) the agreement required a specific period of probation or a specific
 8 term of suspended incarceration.

9 * **Sec. 7.** AS 12.55.125(a) is amended to read:

10 (a) A defendant convicted of murder in the first degree or murder of an unborn
 11 child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment
 12 of at least 20 years but not more than 99 years. A defendant convicted of murder in the
 13 first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

14 (1) the defendant is convicted of the murder of a uniformed or
 15 otherwise clearly identified peace officer, firefighter, or correctional employee who
 16 was engaged in the performance of official duties at the time of the murder;

17 (2) the defendant has been previously convicted of

18 (A) murder in the first degree under AS 11.41.100 or former
 19 AS 11.15.010 or 11.15.020;

20 (B) murder in the second degree under AS 11.41.110 or former
 21 AS 11.15.030; or

22 (C) homicide under the laws of another jurisdiction when the
 23 offense of which the defendant was convicted contains elements similar to first
 24 degree murder under AS 11.41.100 or second degree murder under
 25 AS 11.41.110;

26 (3) [THE COURT FINDS BY CLEAR AND CONVINCING
 27 EVIDENCE THAT] the defendant subjected the murder victim to substantial physical
 28 torture;

29 (4) the defendant is convicted of the murder of and personally caused
 30 the death of a person, other than a participant, during a robbery; or

31 (5) [THE COURT FINDS BY CLEAR AND CONVINCING

1 EVIDENCE THAT] the defendant is a peace officer who used the officer's authority
2 as a peace officer to facilitate the murder.

3 * **Sec. 8.** AS 12.55.125 is amended by adding a new subsection to read:

4 (p) If the state seeks either (1) the imposition of a sentence under (a) of this
5 section that would preclude the defendant from being awarded a good time deduction
6 under AS 33.20.010(a) based on a fact other than a prior conviction; or (2) to establish
7 a fact that would increase the presumptive sentencing range under (c)(2), (d)(2), (e)(4),
8 (i)(1)(A) or (B), or (i)(2)(A) or (B) of this section, the factual question required to be
9 decided shall be presented to a trial jury and proven beyond a reasonable doubt under
10 procedures set by the court, unless the defendant waives trial by jury and either
11 stipulates to the existence of the fact or consents to have the fact proven to the court
12 sitting without a jury. Written notice of the intent to establish a fact under this
13 subsection must be served on the defendant and filed with the court as provided for
14 notice under AS 12.55.155(f)(2).

15 * **Sec. 9.** AS 12.55.155 is amended by adding new subsections to read:

16 (i) If the state seeks to establish a factor in aggravation at sentencing under
17 (c)(10) of this section,

18 (1) the assessment of the facts underlying the state's allegation that the
19 defendant's conduct was among the most serious included in the definition of the
20 offense shall be made by the trial jury under procedures set by the court and as
21 provided in (f)(2) of this section, unless the defendant waives trial by jury, stipulates
22 to the existence of the aggravating factor or to the facts alleged by the state, or
23 consents to have the assessment proved under procedures set out in (f)(1) of this
24 section; factual assertions underlying the state's allegation that the defendant's conduct
25 was among the most serious included in the definition of the offense must be proved
26 beyond a reasonable doubt;

27 (2) the legal decision concerning whether the defendant's conduct
28 determined under (1) of this subsection was among the most serious included in the
29 definition of the offense shall be made by the court under procedures set out in (f)(1)
30 of this section.

31 (j) If one of the aggravating factors in (c) of this section is established as

1 provided in (f)(1) and (2) of this section, the court may increase the term of
 2 imprisonment up to the maximum term of imprisonment. Any additional aggravating
 3 factor may then be established by clear and convincing evidence by the court sitting
 4 without a jury, including an aggravating factor that the jury has found not to have been
 5 established beyond a reasonable doubt.

6 * **Sec. 10.** AS 33.05.050 is amended to read:

7 **Sec. 33.05.050. Report of probation officer.** When directed by the court, the
 8 probation officer shall report to the court [,] with a statement of the conduct of the
 9 probationer while on probation. Except as otherwise provided by law, the [THE]
 10 court may then discharge the probationer from further supervision and may terminate
 11 the proceedings against the probationer, or may extend the probation, as shall seem
 12 advisable.

13 * **Sec. 11.** AS 33.05.070(b) is amended to read:

14 (b) As speedily as possible after arrest, the probationer shall be taken before
 15 the court for the district having jurisdiction over the probationer. Except as provided
 16 in AS 12.55.090(f), [THEREUPON] the court may revoke the probation and require
 17 the probationer to serve the sentence imposed [,] or any lesser sentence [,] and, if
 18 imposition of sentence was suspended, may impose any sentence that [WHICH]
 19 might originally have been imposed, subject to the limitation specified in
 20 AS 12.55.086(c).

21 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 **INDIRECT COURT RULE AMENDMENT.** AS 12.55.125(p), enacted by sec. 8 of
 24 this Act, and AS 12.55.155(i) and (j), enacted by sec. 9 of this Act, have the effect of
 25 changing Rule 32.1, Alaska Rules of Criminal Procedure, by amending procedures for
 26 sentencing persons convicted of certain crimes.

27 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 **APPLICABILITY.** (a) AS 12.47.040(b), as amended by sec. 1 of this Act,
 30 AS 12.47.060(a), as amended by sec. 2 of this Act, AS 12.47.060(b), as amended by sec. 3 of
 31 this Act, AS 12.55.025(i), as amended by sec. 4 of this Act, and AS 12.55.125(a), as amended

1 by sec. 7 of this Act, apply to proceedings occurring on or after the effective date of this Act
2 for offenses occurring before, on, or after the effective date of this Act.

3 (b) AS 12.55.090, as amended by sec. 6 of this Act, applies to offenses occurring on
4 or after the effective date of this Act.

5 (c) AS 12.55.125(p), enacted by sec. 8 of this Act, applies to sentencing proceedings
6 occurring on or after the effective date of this Act for offenses occurring before, on, or after
7 the effective date of this Act.

8 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **CONDITIONAL EFFECT.** Sections 8 and 9 of this Act take effect only if sec. 12 of
11 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
12 Constitution of the State of Alaska.

13 * **Sec. 15.** This Act takes effect July 1, 2012.