

RECOMMENDATION TO THE ALASKA STATE LEGISLATURE BY

THE ALASKA CRIMINAL JUSTICE COMMISSION

No. 1-2016, Approved October 13, 2016

The Alaska Criminal Justice Commission recommends that the Legislature amend AS 12.55.155(d) (Factors in Aggravation and Mitigation) to include two statutory mitigators for “acceptance of responsibility.” The proposed statutory language is below in bold font.

Statutory mitigating factors (“mitigators”) allow a judge to sentence an offender below the presumptive term if the judge finds that the mitigator applies to that offender or offense. The Commission recommends adding two statutory mitigators that will be available for defendants who demonstrate an acceptance of responsibility for their conduct.¹ One mitigator would apply where defendants have entered into a plea agreement, and one would apply where defendants have not. Both of the recommended mitigators are expected to conserve prosecutorial, defense and court resources by promoting timely resolutions of criminal cases. Timely resolutions are also usually consistent with victims’ interests.

1. When there is a Timely Resolution By Plea Agreement

This mitigator would only be applicable when a defendant enters into a plea agreement, and when both parties agree to it. Both the Department of Law and the Public Defender Agency believe this mitigator would incentivize timely resolution of cases by plea agreement. The proposed language is:

AS 12.55.155(d)() “the defendant clearly demonstrates acceptance of personal responsibility for the defendant’s offense, as evidenced by entering into a timely plea agreement with the State of Alaska pursuant to Alaska Rule of Criminal Procedure 11(e).

2. In Cases Where There is No Plea Agreement

This mitigator would be applicable in cases in which a negotiated outcome is not available, for whatever reason. It is hoped that this mitigator will encourage more defendants to voluntarily commence restitution and treatment in advance of sentencing. A mitigator which promotes more timely resolutions and more expressions of remorse was seen as highly beneficial by the victims’ advocates who participated in the Workgroup.

The proposed language of the second mitigator is:

AS 12.55.155(d)() “the defendant, prior to sentencing, clearly demonstrates an affirmative and timely acceptance of responsibility for the defendant’s criminal conduct.

In vetting this proposal, the Commissioners debated many concerns. Some expressed skepticism as to how ‘genuine’ remorse could ever be discerned. Commissioner Alex Bryner (a retired Justice of the Alaska Supreme Court) was concerned that the proposal would allow for most sentences to be ‘mitigated’

¹ These mitigators are somewhat similar to a federal sentencing provision with the same name. See USSG 3E1.1.

and would undermine the integrity of the presumptive sentencing structure. He was also concerned that judges could give widely varying discounts for this mitigator and this could lead to grave disparities among defendants.

Ultimately the Commission did not achieve complete consensus on either mitigator, but the majority of the Commission voted to forward both mitigators using the language above. Commissioner Bryner maintained his objection to the second mitigator. Commissioner Stephanie Rhoades (a sitting district court judge) opposed both mitigators, and expressed concern that as proposed, these mitigators did not offer enough guidance as to how they would operate.