

CS FOR HOUSE BILL NO. 244(2d JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/21/04
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to murder in the second degree, the justification of defense of self or
2 others, rights of arrested persons, release before trial, immunity from prosecution,
3 sentencing, probation, discretionary parole, and the right to representation in certain
4 proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a
5 minor; relating to release of certain agency records; relating to local options regarding
6 alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to a
7 person under 21 years of age, and forfeiture of money or other items of value used in
8 financial transactions derived from violation of certain laws relating to alcoholic
9 beverages; relating to assault by means of a dangerous instrument; relating to operating
10 or driving a motor vehicle, aircraft, or watercraft while under the influence of an
11 alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a
12 chemical test, and to the presumptions and chemical analysis of breath or blood; and

1 providing for an effective date."

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

3 * **Section 1.** AS 04.11.010(c) is amended to read:

4 (c) Unless a municipality or established village has adopted a more
 5 restrictive local option under AS 04.11.491(g), in [IN] a criminal prosecution for
 6 possession of alcoholic beverages for sale in violation of (a) of this section, the fact
 7 that a person

8 (1) possessed more than 12 liters of distilled spirits, 24 liters or more
 9 of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic
 10 beverages is restricted or prohibited under AS 04.11.491 creates a presumption that
 11 the person possessed the alcoholic beverages for sale;

12 (2) sends, transports, or brings more than 12 liters of distilled
 13 spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an
 14 area where the sale of alcoholic beverages is restricted or prohibited under
 15 AS 04.11.491 creates a presumption that the person sent, transported, or brought
 16 the alcoholic beverages for sale in the area.

17 * **Sec. 2.** AS 04.11.010 is amended by adding a new subsection to read:

18 (d) In this section,

19 (1) "bring" has the meaning given in AS 04.11.499;

20 (2) "send" has the meaning given in AS 04.11.499;

21 (3) "transport" has the meaning given in AS 04.11.499.

22 * **Sec. 3.** AS 04.11.150(g) is amended to read:

23 (g) If a shipment is to an area that has restricted the sale of alcoholic
 24 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store
 25 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half
 26 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt
 27 beverages in a calendar month, or a lower amount of distilled spirits, wine, or malt
 28 beverages if the municipality or established village has adopted the lower amount
 29 by local option under AS 04.11.491(g).

30 * **Sec. 4.** AS 04.11.491 is amended by adding a new subsection to read:

1 (g) If a municipality or established village has adopted a local option under
 2 (a)(1), (2), (3), or (4), or (b)(1), (2), or (3) of this section, the municipality or
 3 established village, as part of the local option question or questions placed before the
 4 voters, may

5 (1) adopt an amount of alcoholic beverages that may be imported that
 6 is less than the amounts set out in AS 04.11.150(g);

7 (2) adopt an amount of alcoholic beverages that would give rise to a
 8 presumption that the person possessed the alcoholic beverages for sale; the amounts
 9 adopted under this paragraph may be lower than those set out in AS 04.11.010(c);

10 (3) opt to not apply a class C felony to violations of AS 04.16.051 that
 11 apply solely by reason of the municipality or established village adopting a local
 12 option under this section.

13 * **Sec. 5.** AS 04.16.051(d) is amended to read:

14 (d) A person acting with criminal negligence who violates this section is guilty
 15 of a class C felony if

16 (1) within the five years preceding the violation, the person has been
 17 previously convicted under

18 (A) this section; or

19 (B) a law or ordinance of this or another jurisdiction with
 20 elements substantially similar to this section; [OR]

21 (2) the person who receives the alcoholic beverage negligently causes
 22 serious physical injury to or the death of another person while under the influence of
 23 the alcoholic beverage received in violation of this section; in this paragraph,

24 (A) "negligently" means acting with civil negligence; and

25 (B) "serious physical injury" has the meaning given in
 26 AS 11.81.900; **or**

27 **(3) the violation occurs within the boundaries of a municipality or**
 28 **the perimeter of an established village that has adopted a local option under**
 29 **AS 04.11.491 and has not opted out of applying a class C felony to violations of**
 30 **this section under AS 04.11.491(g).**

31 * **Sec. 6.** AS 04.16.220(a) is amended to read:

1 (a) The following are subject to forfeiture:

2 (1) alcoholic beverages manufactured, sold, offered for sale or
3 possessed for sale, bartered or exchanged for goods and services in this state in
4 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or
5 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for
6 sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages
7 transported into the state and sold to persons not licensed under this chapter in
8 violation of AS 04.16.170(b);

9 (2) materials and equipment used in the manufacture, sale, offering for
10 sale, possession for sale, barter or exchange of alcoholic beverages for goods and
11 services in this state in violation of AS 04.11.010; materials and equipment used in the
12 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;
13 materials and equipment used in the sale or offering for sale of an alcoholic beverage
14 in an area in violation of a local option adopted under AS 04.11.491;

15 (3) aircraft, vehicles, or vessels used to transport, or facilitate the
16 transportation of

17 (A) alcoholic beverages manufactured, sold, offered for sale or
18 possessed for sale, bartered or exchanged for goods and services in this state in
19 violation of AS 04.11.010;

20 (B) property stocked, warehoused, or otherwise stored in
21 violation of AS 04.21.060;

22 (C) alcoholic beverages imported into a municipality or
23 established village in violation of AS 04.11.499;

24 (4) alcoholic beverages found on licensed premises that do not bear
25 federal excise stamps if excise stamps are required under federal law;

26 (5) alcoholic beverages, materials or equipment used in violation of
27 AS 04.16.175;

28 **(6) money, securities, negotiable instruments, or other things of**
29 **value used in financial transactions derived from activity prohibited under**
30 **AS 04.11.010 or in violation of a local option adopted under AS 04.11.491.**

31 * **Sec. 7.** AS 04.16.220 is amended by adding a new subsection to read:

1 (i) When forfeiting property under (a) or (d) of this section, a court may award
 2 to a municipal law enforcement agency that participated in the arrest or conviction of
 3 the defendant, the seizure of property, or the identification of property for seizure,

4 (1) the property if the property is worth \$5,000 or less and is not
 5 money or some other thing that is divisible; or

6 (2) up to 75 percent of the property or the value of the property if the
 7 property is worth more than \$5,000 or is money or some other thing that is divisible;
 8 in determining the percentage a municipal law enforcement agency may receive under
 9 this subsection, the court shall consider the municipal law enforcement agency's total
 10 involvement in the case relative to the involvement of the state.

11 * **Sec. 8.** AS 09.50.020(a) is amended to read:

12 (a) A person who is guilty of contempt is punishable by a fine of not more
 13 than \$300 or by imprisonment for not more than six months. However, when the
 14 contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a
 15 magistrate, the person is punishable by a fine of not more than \$100 unless it appears
 16 that a right or remedy of a party to an action or proceeding was defeated or prejudiced
 17 by the contempt, in which case the penalty shall be as prescribed for contempts
 18 described in AS 09.50.010(1) and [,] (2) [, AND (13)].

19 * **Sec. 9.** AS 11.41.110(a) is amended to read:

20 (a) A person commits the crime of murder in the second degree if

21 (1) with intent to cause serious physical injury to another person or
 22 knowing that the conduct is substantially certain to cause death or serious physical
 23 injury to another person, the person causes the death of any person;

24 (2) the person knowingly engages in conduct that results in the death
 25 of another person under circumstances manifesting an extreme indifference to the
 26 value of human life;

27 (3) under circumstances not amounting to murder in the first degree
 28 under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the
 29 person commits or attempts to commit arson in the first degree, kidnapping, sexual
 30 assault in the first degree, sexual assault in the second degree, sexual abuse of a minor
 31 in the first degree, sexual abuse of a minor in the second degree, burglary in the first

1 degree, escape in the first or second degree, robbery in any degree, or misconduct
 2 involving a controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1)
 3 or (2), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or
 4 in immediate flight from that crime, any person causes the death of a person **except**
 5 **when the killing is of a participant and is the direct result of felony criminal**
 6 **conduct by a nonparticipant** [OTHER THAN ONE OF THE PARTICIPANTS];

7 (4) acting with a criminal street gang, the person commits or attempts
 8 to commit a crime that is a felony and, in the course of or in furtherance of that crime
 9 or in immediate flight from that crime, any person causes the death of a person **except**
 10 **when the killing is of a participant and is the direct result of felony criminal**
 11 **conduct by a nonparticipant** [OTHER THAN ONE OF THE PARTICIPANTS]; or

12 (5) the person with criminal negligence causes the death of a child
 13 under the age of 16, and the person has been previously convicted of a crime involving
 14 a child under the age of 16 that was

15 (A) a felony violation of AS 11.41;

16 (B) in violation of a law or ordinance in another jurisdiction
 17 with elements similar to a felony under AS 11.41; or

18 (C) an attempt, a solicitation, or a conspiracy to commit a
 19 crime listed in (A) or (B) of this paragraph.

20 * **Sec. 10.** AS 11.41.220(a) is amended to read:

21 (a) A person commits the crime of assault in the third degree if that person

22 (1) recklessly

23 (A) places another person in fear of imminent serious physical
 24 injury by means of a dangerous instrument;

25 (B) causes physical injury to another person by means of a
 26 dangerous instrument; or

27 (C) while being 18 years of age or older

28 (i) causes physical injury to a child under 10 years of
 29 age and the injury reasonably requires medical treatment;

30 (ii) causes physical injury to a child under 10 years of
 31 age on more than one occasion;

1 (2) with intent to place another person in fear of death or serious
 2 physical injury to the person or the person's family member makes repeated threats to
 3 cause death or serious physical injury to another person; [OR]

4 (3) while being 18 years of age or older, knowingly causes physical
 5 injury to a child under 16 years of age but at least 10 years of age and the injury
 6 reasonably requires medical treatment; or

7 **(4) with criminal negligence causes serious physical injury under**
 8 **AS 11.81.900(b)(55)(B) to another person by means of a dangerous instrument.**

9 * **Sec. 11.** AS 11.41.438(a) is amended to read:

10 (a) An offender commits the crime of sexual abuse of a minor in the third
 11 degree if

12 (1) **being under 16 years of age, the offender engages in sexual**
 13 **penetration with a person who is under 13 years of age and at least three years**
 14 **younger than the offender;**

15 (2) being 16 years of age or older, the offender engages in sexual
 16 contact with a person who is 13, 14, or 15 years of age and at least three years younger
 17 than the offender; or

18 (3) [(2)] being 18 years of age or older, the offender engages in sexual
 19 penetration with a person who is 16 or 17 years of age and at least three years younger
 20 than the offender, and the offender occupies a position of authority in relation to the
 21 victim.

22 * **Sec. 12.** AS 11.41.440(a) is amended to read:

23 (a) An offender commits the crime of sexual abuse of a minor in the fourth
 24 degree if

25 (1) being under 16 years of age, the offender engages in [SEXUAL
 26 PENETRATION OR] sexual contact with a person who is under 13 years of age and
 27 at least three years younger than the offender; or

28 (2) being 18 years of age or older, the offender engages in sexual
 29 contact with a person who is 16 or 17 years of age and at least three years younger
 30 than the offender, and the offender occupies a position of authority in relation to the
 31 victim.

1 * **Sec. 13.** AS 11.56 is amended by adding a new section to read:

2 **Sec. 11.56.758. Violation of custodian's duty.** (a) A person commits the
3 crime of violation of custodian's duty if the person knowingly fails, when acting as a
4 custodian appointed by the court for a released person under AS 12.30, to report
5 immediately as directed by the court that the person released has violated a condition
6 of release.

7 (b) Violation of custodian's duty is a

8 (1) class A misdemeanor if the released person is charged with a
9 felony;

10 (2) class B misdemeanor if the released person is charged with a
11 misdemeanor.

12 * **Sec. 14.** AS 11.81.330(a) is amended to read:

13 (a) A person may use nondeadly force upon another when and to the extent the
14 person reasonably believes it is necessary for self defense against what the person
15 reasonably believes to be the use of unlawful force by the other, unless

16 (1) the force involved was the product of mutual combat not
17 authorized by law;

18 (2) the person claiming the defense of justification provoked the
19 other's conduct with intent to cause physical injury to the other; [OR]

20 (3) the person claiming the defense of justification was the initial
21 aggressor; or

22 (4) the force applied was the result of using a deadly weapon that
23 the person claiming the defense of justification possessed while

24 (A) acting alone or with others to further a felony criminal
25 objective of the person or one or more other persons; or

26 (B) participating in a felony transaction or purported
27 transaction, or in immediate flight from a felony transaction or purported
28 transaction in violation of AS 11.71.

29 * **Sec. 15.** AS 11.81 is amended by adding a new section to read:

30 **Sec. 11.81.345. Defense of self and others.** A court may instruct a jury about
31 the justification described in AS 11.81.330 - 11.81.340 if the court, sitting without a

1 jury, finds that there is some plausible evidence to warrant a reasonable jury to find
2 the elements of the justification.

3 * **Sec. 16.** AS 12.25.150(b) is repealed and reenacted to read:

4 (b) Immediately after an arrest, a prisoner has the right to (1) telephone or
5 otherwise communicate with the prisoner's attorney; (2) telephone or otherwise
6 communicate with any relative or friend; (3) an immediate visit from an attorney at
7 law entitled to practice in the courts of Alaska requested by the prisoner; and (4) a
8 visit from a relative or friend requested by the prisoner. This subsection does not
9 provide a prisoner with the right to initiate communication or attempt to initiate
10 communication under circumstances proscribed under AS 11.56.755.

11 * **Sec. 17.** AS 12.30.020(b)(1) is amended to read:

12 (1) place the person in the custody of a designated person or
13 organization agreeing as a custodian to supervise the person; the court shall,
14 personally and in writing, inform the custodian about the duties required of a
15 custodian, and that failure to report immediately in accordance with the terms of the
16 order that the person released has violated a condition of release may result in the
17 custodian's being held **criminally liable** [IN CONTEMPT] under **AS 11.56.758**
18 [AS 09.50.010];

19 * **Sec. 18.** AS 12.30.020 is amended by adding a new subsection to read:

20 (i) The court shall issue written or oral findings to demonstrate why conditions
21 provided under (b)(1) of this section needed to be imposed.

22 * **Sec. 19.** AS 12.50.101(a) is amended to read:

23 (a) If a witness refuses, on the basis of the privilege against self-incrimination,
24 to testify or provide other information in a criminal proceeding before or ancillary to a
25 court or grand jury of this state, and a judge issues an order under (b) of this section,
26 the witness may not refuse to comply with the order on the basis of the privilege
27 against self-incrimination. If the witness fully complies with the order, **the witness**
28 **may not be prosecuted for an offense about which the witness is compelled to**
29 **testify** [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER
30 THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED
31 FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED

1 AGAINST THE WITNESS IN A CRIMINAL CASE,] except in a prosecution based
 2 on perjury, giving a false statement, or otherwise knowingly providing false
 3 information, or hindering prosecution.

4 * **Sec. 20.** AS 12.50.101(e) is amended to read:

5 (e) As used in this section,

6 **(1) "higher-level felony" means an unclassified or a class A felony;**

7 **(2) "lower-level felony" means a class B or class C felony;**

8 **(3) "other information" means books, papers, documents, records,**
 9 **recordings, or other similar material;**

10 **(4) "proffer" means a written or oral statement by the attorney for**
 11 **the witness, stating the attorney's good faith belief of the substance of the**
 12 **witness's testimony or other information.**

13 * **Sec. 21.** AS 12.50.101 is amended by adding new subsections to read:

14 (f) If a witness refuses, or there is reason to believe the witness will refuse, to
 15 testify or provide other information based on the privilege against self-incrimination,
 16 and if the attorney general or the attorney general's designee has not applied for an
 17 order under (b) of this section, the court shall inform the witness of the right to be
 18 represented by an attorney, and that an attorney will be appointed for the witness if the
 19 witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to
 20 allow the witness to consult with the attorney for the witness.

21 (g) If the attorney general or the attorney general's designee declines to seek
 22 an order under (b) of this section after the witness has had an opportunity to consult
 23 with an attorney, and the witness continues to refuse to testify or provide other
 24 information, the court shall hold a hearing to determine the validity of the claim of
 25 privilege by the witness. The hearing shall be in camera.

26 (h) At the hearing under (g) of this section, the attorney for the witness, in the
 27 form of a proffer, shall describe the testimony or other information that the witness
 28 claims is privileged. The proffer must include a description of how the testimony or
 29 other information could connect the witness with a crime. The proffer is privileged
 30 and inadmissible for any other purpose. If the proffer establishes a factual basis that
 31 there is a real or substantial danger that the testimony or other information to be

1 compelled would support a conviction or would furnish a link in the chain of evidence
 2 leading to conviction for a crime, the court may find that the witness has a valid claim
 3 of privilege.

4 (i) If the court finds that the witness has a valid claim of privilege, it shall
 5 advise an attorney designated by the attorney general of that finding and inform the
 6 attorney of the category or categories of offense to which the privilege applies: a
 7 higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney
 8 decides that granting immunity to the witness is appropriate, the designated attorney
 9 shall deliver or cause to be delivered a letter to that effect to the witness or an attorney
 10 for the witness. The designated attorney may not disclose the category of offense to
 11 anyone.

12 * **Sec. 22.** AS 12.55.025(c) is amended to read:

13 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is
 14 sentenced to imprisonment, the term of confinement commences on the date of
 15 imposition of sentence unless the court specifically provides that the defendant must
 16 report to serve the sentence on another date. If the court provides another date to
 17 begin the term of confinement, the court shall provide the defendant with written
 18 notice of the date, time, and location of the correctional facility to which the defendant
 19 must report. A defendant shall receive credit for time spent in custody pending trial,
 20 sentencing, or appeal, if the detention was in connection with the offense for which
 21 sentence was imposed. A defendant may not receive credit for more than the actual
 22 time spent in custody pending trial, sentencing, or appeal. The time during which a
 23 defendant is voluntarily absent from official detention after the defendant has been
 24 sentenced may not be credited toward service of the sentence.

25 * **Sec. 23.** AS 12.55 is amended by adding a new section to read:

26 **Sec. 12.55.127. Consecutive terms of imprisonment.** (a) If a defendant is
 27 required to serve a term of imprisonment under a separate judgment, a term of
 28 imprisonment imposed in a later judgment, amended judgment, or probation
 29 revocation shall be consecutive.

30 (b) Except as provided in (c) of this section, if a defendant is being sentenced
 31 for two or more crimes in a single judgment, terms of imprisonment may be

1 concurrent or partially concurrent.

2 (c) If the defendant is being sentenced for

3 (1) escape, the term of imprisonment shall be consecutive to the term
4 for the underlying crime;

5 (2) two or more crimes under AS 11.41, a consecutive term of
6 imprisonment shall be imposed for at least

7 (A) the mandatory minimum term under AS 12.55.125(a) for
8 each additional crime that is murder in the first degree;

9 (B) the mandatory minimum term for each additional crime
10 that is an unclassified felony governed by AS 12.55.125(b);

11 (C) the presumptive term specified in AS 12.55.125(c) or the
12 active term of imprisonment, whichever is less, for each additional crime that
13 is

14 (i) manslaughter; or

15 (ii) kidnapping that is a class A felony;

16 (D) two years or the active term of imprisonment, whichever is
17 less, for each additional crime that is criminally negligent homicide;

18 (E) one-fourth of the presumptive term under AS 12.55.125(c)
19 or (i) for each additional crime that is sexual assault in the first degree under
20 AS 11.41.410, or sexual abuse of a minor in the first degree under
21 AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those
22 offenses; and

23 (F) some additional term of imprisonment for each additional
24 crime, or each additional attempt or solicitation to commit the offense, under
25 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or
26 11.41.500 - 11.41.520.

27 (d) In this section,

28 (1) "active term of imprisonment" means the total term of
29 imprisonment imposed for a crime minus suspended imprisonment;

30 (2) "additional crime" means a crime that is not the primary crime;

31 (3) "primary crime" means the crime

1 (A) for which the sentencing court imposes the longest active
2 term of imprisonment; or

3 (B) that is designated by the sentencing court as the primary
4 crime when no single crime has the longest active term of imprisonment.

5 * **Sec. 24.** AS 18.85.100 is amended by adding a new subsection to read:

6 (f) Notwithstanding (a) of this section, an indigent person is entitled to the
7 representation and necessary services and facilities of representation as provided in (a)
8 of this section when the person is a witness who refuses, or there is reason to believe
9 will refuse, to testify or provide other information based on the privilege against self-
10 incrimination.

11 * **Sec. 25.** AS 28.35.030(a) is amended to read:

12 (a) A person commits the crime of driving while under the influence of an
13 alcoholic beverage, inhalant, or controlled substance if the person operates or drives a
14 motor vehicle or operates an aircraft or a watercraft

15 (1) while under the influence of an alcoholic beverage, intoxicating
16 liquor, inhalant, or any controlled substance, singly or in combination; **or**

17 (2) **and if** [WHEN], as determined by a chemical test taken within four
18 hours after the alleged operating or driving [OFFENSE WAS COMMITTED], there
19 is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or
20 more of alcohol per 100 milliliters of blood, or **if** [WHEN] there is 0.08 grams or more
21 of alcohol per 210 liters of the person's breath [; OR

22 (3) WHILE THE PERSON IS UNDER THE COMBINED
23 INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR,
24 AN INHALANT, AND A CONTROLLED SUBSTANCE].

25 * **Sec. 26.** AS 28.35.030(n) is amended to read:

26 (n) A person is guilty of a class C felony if the person is convicted under (a) of
27 this section and **either** has been previously convicted two or more times since
28 January 1, 1996, and within the 10 years preceding the date of the present offense, **or**
29 **punishment under this subsection or under AS 28.35.032(p) was previously**
30 **imposed within the last 20 years.** For purposes of determining minimum sentences
31 based on previous convictions, the provisions of (r)(4) of this section apply. Upon

1 conviction, the court

2 (1) shall impose a fine of not less than \$10,000 and a minimum
3 sentence of imprisonment of not less than

4 (A) 120 days if the person has been previously convicted twice;

5 (B) 240 days if the person has been previously convicted three
6 times;

7 (C) 360 days if the person has been previously convicted four
8 or more times;

9 (2) may not

10 (A) suspend execution of sentence or grant probation except on
11 condition that the person serve the minimum imprisonment under (1) of this
12 subsection; or

13 (B) suspend imposition of sentence;

14 (3) shall permanently revoke the person's driver's license, privilege to
15 drive, or privilege to obtain a license subject to restoration of the license under (o) of
16 this section;

17 (4) may order that the person, while incarcerated or as a condition of
18 probation or parole, take a drug or combination of drugs, intended to prevent the
19 consumption of an alcoholic beverage; a condition of probation or parole imposed
20 under this paragraph is in addition to any other condition authorized under another
21 provision of law;

22 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,
23 or aircraft used in the commission of the offense, subject to remission under
24 AS 28.35.037; and

25 (6) shall order the department to revoke the registration for any vehicle
26 registered by the department in the name of the person convicted under this
27 subsection; if a person convicted under this subsection is a registered co-owner of a
28 vehicle or is registered as a co-owner under a business name, the department shall
29 reissue the vehicle registration and omit the name of the person convicted under this
30 subsection.

31 * **Sec. 27.** AS 28.35.030 is amended by adding a new subsection to read:

1 (s) In a prosecution under (a) of this section, a person may introduce evidence
 2 on the amount of alcohol consumed before or after operating or driving the motor
 3 vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the
 4 consumption of alcohol before operating or driving may not be used as a defense that
 5 the chemical test did not measure the blood alcohol at the time of the operating or
 6 driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft,
 7 or watercraft may be used to raise such a defense.

8 * **Sec. 28.** AS 28.35.032(p) is amended to read:

9 (p) A person is guilty of a class C felony if the person is convicted under this
 10 section and **either** has been previously convicted two or more times since January 1,
 11 1996, and within the 10 years preceding the date of the present offense, **or**
 12 **punishment under this subsection or under AS 28.35.030(n) was previously**
 13 **imposed within the last 20 years.** For purposes of determining minimum sentences
 14 based on previous convictions, the provisions of AS 28.35.030(r)(4) apply. Upon
 15 conviction,

16 (1) the court shall impose a fine of not less than \$10,000 and a
 17 minimum sentence of imprisonment of not less than

18 (A) 120 days if the person has been previously convicted twice;

19 (B) 240 days if the person has been previously convicted three
 20 times;

21 (C) 360 days if the person has been previously convicted four
 22 or more times;

23 (2) the court may not

24 (A) suspend execution of the sentence required by (1) of this
 25 subsection or grant probation, except on condition that the person serve the
 26 minimum imprisonment under (1) of this subsection; or

27 (B) suspend imposition of sentence;

28 (3) the court shall permanently revoke the person's driver's license,
 29 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
 30 this section;

31 (4) the court may order that the person, while incarcerated or as a

1 condition of probation or parole, take a drug, or combination of drugs, intended to
 2 prevent consumption of an alcoholic beverage; a condition of probation or parole
 3 imposed under this paragraph is in addition to any other condition authorized under
 4 another provision of law;

5 (5) the sentence imposed by the court under this subsection shall run
 6 consecutively with any other sentence of imprisonment imposed on the person;

7 (6) the court shall order forfeiture under AS 28.35.036, of the motor
 8 vehicle, aircraft, or watercraft used in the commission of the offense, subject to
 9 remission under AS 28.35.037; and

10 (7) the court shall order the department to revoke the registration for
 11 any vehicle registered by the department in the name of the person convicted under
 12 this subsection; if a person convicted under this subsection is a registered co-owner of
 13 a vehicle, the department shall reissue the vehicle registration and omit the name of
 14 the person convicted under this subsection.

15 * **Sec. 29.** AS 28.35.033(c) is amended to read:

16 (c) **Except as provided in AS 28.35.030(s), the** [THE] provisions of (a) of
 17 this section may not be construed to limit the introduction of any other competent
 18 evidence bearing upon the question of whether the person was or was not under the
 19 influence of intoxicating liquor.

20 * **Sec. 30.** AS 33.16.090(b) is amended to read:

21 (b) Except as provided in (e) of this section, a prisoner is not eligible for
 22 discretionary parole during the term of a presumptive sentence; however, a prisoner is
 23 eligible for discretionary parole during a term of sentence enhancement imposed under
 24 AS 12.55.155(a) or during the term of a consecutive or partially consecutive
 25 presumptive sentence imposed under **AS 12.55.127** [AS 12.55.025(e) OR (g)]. A
 26 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite
 27 term under AS 12.55.125(l) is not eligible for discretionary parole during the entire
 28 term.

29 * **Sec. 31.** AS 33.16.090(c) is amended to read:

30 (c) Except as provided in (e) of this section, a prisoner eligible for
 31 discretionary parole during a period of sentence enhancement imposed under

1 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence
 2 imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)] shall serve the unenhanced
 3 portion of the sentence or the initial presumptive sentence before being otherwise
 4 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this
 5 subsection, the sentence for the most serious offense in the case of consecutive or
 6 partially consecutive presumptive sentences shall be considered the initial presumptive
 7 sentence. The unenhanced sentence or the initial presumptive sentence is considered
 8 served for purposes of discretionary parole on the date the unenhanced or initial
 9 presumptive sentence is due to expire less good time earned under AS 33.20.010.

10 * **Sec. 32.** AS 47.12.310 is amended by adding a new subsection to read:

11 (k) A state or municipal agency or authorized employee, other than a state or
 12 municipal law enforcement agency under (c) of this section, may disclose to the public
 13 information regarding a case as may be necessary to protect the safety of the public,
 14 provided the disclosure is authorized by regulations adopted by the department.

15 * **Sec. 33.** (a) AS 09.50.010(13) is repealed.

16 (b) AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

17 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 APPLICABILITY. (a) The changes made in secs. 5, 6, 9 - 12, 14, 15, 22, 23, 30, 31,
 20 and 33(b) of this Act apply to offenses committed on or after the respective effective date of
 21 those sections.

22 (b) Sections 25, 26, and 28 of this Act apply to offenses occurring on or after the
 23 effective date of those sections, except that previous punishment, referred to in
 24 AS 28.35.030(n), as amended by sec. 26 of this Act, and in AS 28.35.032(p), as amended by
 25 sec. 28 of this Act, includes punishment imposed before, on, or after the effective date of secs.
 26 26 and 28 of this Act.

27 (c) Sections 8, 13, and 17 of this Act apply to custodians who fail to report on or after
 28 the effective date of those sections of this Act, for persons released for offenses committed
 29 before, on, or after the effective date of those sections of this Act.

30 (d) The changes made in secs. 7, 16, 19 - 21, 27, and 30 of this Act apply to criminal
 31 proceedings for offenses committed before, on, or after the effective date of those sections.

1 (e) Section 32 of this Act applies to an offense occurring before, on, or after the
2 effective date of this Act.

3 * **Sec. 35.** This Act takes effect July 1, 2004.