

SENATE BILL NO. 64

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 2/27/13

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska Sentencing Commission; relating to jail-time credit for
2 offenders in court-ordered treatment programs; allowing a reduction of penalties for
3 offenders successfully completing court-ordered treatment programs for persons
4 convicted of driving while under the influence or refusing to submit to a chemical test;
5 relating to court termination of a revocation of a person's driver's license; relating to
6 limitation of drivers' licenses; relating to conditions of probation and parole; and
7 providing for an effective date."

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

9 * **Section 1.** AS 12.55.027(c) is amended to read:

10 (c) To qualify for credit against a sentence of imprisonment for time spent in a
11 treatment program, the treatment program and the facility of the treatment program
12 must impose substantial restrictions on a person's liberty that are equivalent to
13 incarceration, including the requirement that a participant in the program

- 1 (1) must live in a residential facility operated by the program;
- 2 (2) must be confined at all times to the grounds of the facility or be in
- 3 the physical custody of an employee of the facility, except for court appearances,
- 4 meetings with counsel, or periods during which residents are permitted to leave
- 5 the facility, so long as the periods during which the residents are permitted to
- 6 leave the facility are expressly limited as to both time and purpose [AND WORK
- 7 REQUIRED BY THE TREATMENT PROGRAM AND APPROVED IN ADVANCE
- 8 BY THE COURT];
- 9 (3) is subject to disciplinary sanctions by the program if the participant
- 10 violates rules of the program and facility; sanctions must be in writing and available
- 11 for court review; and
- 12 (4) is subject to immediate arrest, without warrant, if the participant
- 13 leaves the facility without permission.

14 * **Sec. 2.** AS 22.20 is amended by adding new sections to read:

15 **Article 7. Sentencing Commission.**

16 **Sec. 22.20.500. Creation of commission.** The Alaska Sentencing Commission

17 is established in the Alaska Court System.

18 **Sec. 22.20.510. Membership; staff.** (a) The commission consists of 16

19 members as follows:

- 20 (1) three members of the senate appointed by the president of the
- 21 senate, one of whom shall be a member of the minority caucus of the senate;
- 22 (2) three members of the house of representatives appointed by the
- 23 speaker of the house of representatives, one of whom shall be a member of the
- 24 minority caucus of the house of representatives;
- 25 (3) the chief justice of the Alaska Supreme Court or another justice of
- 26 the supreme court designated by the chief justice;
- 27 (4) a superior court judge designated by the chief justice for a three-
- 28 year term;
- 29 (5) a district court judge designated by the chief justice for a three-year
- 30 term;
- 31 (6) the executive director of the Alaska Native Justice Center or a

1 designee of the director;

2 (7) the attorney general or a designee of the attorney general;

3 (8) the commissioner of corrections or a deputy commissioner
4 designated by the commissioner;

5 (9) the commissioner of public safety or a deputy commissioner
6 designated by the commissioner;

7 (10) the director of the division responsible for juvenile justice in the
8 Department of Health and Social Services or a supervising regional probation officer
9 designated by the director;

10 (11) the director of the Public Defender Agency or a deputy public
11 defender designated by the director; and

12 (12) the director of the office of public advocacy or deputy director
13 designated by the director.

14 (b) The commission shall, by majority vote of the membership, elect a chair
15 and other officers it considers necessary from among its membership to serve on a
16 yearly basis.

17 (c) The Alaska Judicial Council shall provide staff and administrative support
18 to the commission.

19 **Sec. 22.20.520. Compensation.** Members of the commission serve without
20 compensation but are entitled to per diem and travel expenses authorized for boards
21 and commissions under AS 39.20.180.

22 **Sec. 22.20.530. Meetings.** A majority of the members constitutes a quorum for
23 conducting business and exercising the powers of the commission. The commission
24 shall meet at the call of the chair, at the request of the majority of the members, or at a
25 regularly scheduled time as determined by a majority of the members. The
26 commission shall keep a record of its proceedings and make these records available
27 for public inspection.

28 **Sec. 22.20.540. Powers and duties of the commission.** (a) The commission
29 shall evaluate the effect of sentencing laws and practices on the criminal justice
30 system to evaluate whether sentences provide for protection of the public, community
31 condemnation of the offender, the rights of victims of crimes, restitution from the

1 offender, and the principle of reformation. The commission shall make
 2 recommendations for improving criminal sentencing practices and, in so doing, the
 3 commission shall consider

4 (1) statutes and court rules related to sentencing of criminal defendants
 5 in misdemeanor and felony cases;

6 (2) sentencing practices of the judiciary, including use of presumptive
 7 sentences;

8 (3) means of promoting uniformity and proportionality in sentencing;

9 (4) alternatives to traditional forms of incarceration;

10 (5) the use of parole and probation in sentencing criminal defendants
 11 and to ensure public safety;

12 (6) the adequacy, availability, and effectiveness of treatment and
 13 rehabilitation programs;

14 (7) crime and incarceration rates, including the rate of violent crime, in
 15 this state compared to other states, and best practices adopted by other states that have
 16 proven to be successful in reducing recidivism;

17 (8) the relationship between sentencing priorities and correctional
 18 resources;

19 (9) truth and certainty in statutes and sentencing practices; and

20 (10) the effectiveness of the state's current methodologies for the
 21 collection and dissemination of criminal justice data.

22 (b) The commission may

23 (1) select and retain the services of consultants whose advice is
 24 considered necessary to assist the commission in obtaining information;

25 (2) accumulate and compile information concerning sentencing
 26 practices; and

27 (3) recommend legislative and administrative action on sentencing
 28 practices.

29 **Sec. 22.20.550. Methodology.** In making recommendations, the commission
 30 shall

31 (1) solicit and consider information and views from a variety of

1 constituencies to represent the broad spectrum of views that exist with respect to
 2 possible approaches to sentencing criminals in the state; and

3 (2) base recommendations on the following factors:

4 (A) the seriousness of each offense in relation to other offenses;

5 (B) the effect of an offender's prior criminal history on
 6 sentencing;

7 (C) the need to rehabilitate criminal offenders;

8 (D) the need to confine offenders to prevent harm to the public;

9 (E) the extent to which criminal offenses harm victims and
 10 endanger the public safety and order;

11 (F) the effect of sentencing in deterring an offender or other
 12 members of society from future criminal conduct;

13 (G) the effect of sentencing as a community condemnation of
 14 criminal acts and as a reaffirmation of societal norms;

15 (H) the elimination of unjustified disparity in sentences;

16 (I) the resources available to agencies in the criminal justice
 17 system; and

18 (J) the effect of sentencing on reducing the rate of recidivism in
 19 the state.

20 **Sec. 22.20.560. Annual report and recommendations.** The commission shall
 21 submit to the governor and the legislature an annual report of its proceedings for the
 22 previous calendar year and may submit recommendations for legislative and
 23 administrative action. Reports and recommendations provided under this section shall
 24 be submitted not later than January 1 of each year.

25 **Sec. 22.20.570. Definition.** In AS 22.20.500 - 22.20.570, "commission" means
 26 the Alaska Sentencing Commission.

27 * **Sec. 3.** AS 28.15.181(f) is amended to read:

28 (f) The court may terminate a revocation for an offense described in (a)(5) or
 29 (8) of this section if

30 (1) **either**

31 **(A)** the person's license, privilege to drive, or privilege to

obtain a license has been revoked for the minimum periods set out in (c) of this section; or

(B) the person has successfully completed a court-ordered treatment program under AS 28.35.028 and has not been charged with or convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction since completing the program;
and

(2) the person complies with the provisions of AS 28.15.211(d) and (e).

* **Sec. 4.** AS 28.15.201 is amended by adding new subsections to read:

(g) Notwithstanding (d) of this section, a court revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c) may grant limited license privileges if

(1) the revocation was for a conviction under AS 28.35.030 or 28.35.032 or a similar municipal ordinance;

(2) the person is participating in a court-ordered treatment program under AS 28.35.028;

(3) the person provides proof of insurance as required by AS 28.20.230 and 28.20.240; and

(4) the person totally abstains from the use of alcoholic beverages, inhalants, and controlled substances and agrees to, participates in, and pays the cost of testing for the use of any of those substances.

(h) The court shall immediately revoke a limited license granted under (g) of this section if the person

(1) is charged with or convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction; or

(2) tests positive under (g)(4) of this section for the use of alcoholic beverages, inhalants, or controlled substances.

* **Sec. 5.** AS 28.35.028(b) is amended to read:

(b) Once the court elects to proceed under this section, the defendant shall enter a no contest or guilty plea to the offense or shall admit to a probation violation,

as appropriate. The state and the defendant may enter into a plea agreement to determine the offense or offenses to which the defendant is required to plead. If the court accepts the agreement, the court shall enforce the terms of the agreement. The court shall enter a judgment of conviction for the offense or offenses for which the defendant has pleaded or an order finding that the defendant has violated probation, as appropriate. A judgment of conviction or an order finding a probation violation must set a schedule for payment of restitution owed by the defendant. In a judgment of conviction and on probation conditions that the court considers appropriate, the court may withhold pronouncement of a period of imprisonment or a fine to provide an incentive for the defendant to complete recommended treatment successfully. Imprisonment or a fine imposed by a court shall comply with AS 12.55 or any mandatory minimum or other sentencing provision applicable to the offense. However, notwithstanding Rule 35, Alaska Rules of Criminal Procedure, and any other provision of law, the court, at any time after the period when a reduction of sentence is normally available, may consider and reduce the defendant's sentence, including imprisonment, fine, or license revocation, based on the defendant's compliance with the treatment plan; when reducing a sentence, the court (1) may not reduce the sentence below the mandatory minimum sentence for the offense unless the court finds that the defendant has successfully complied with and completed the treatment plan and that the treatment plan approximated the severity of the minimum period of imprisonment, and (2) may consider the defendant's compliance with the treatment plan as a mitigating factor allowing a reduction of a sentence under AS 12.55.155(a). A court entering an order finding the defendant has violated probation may withhold pronouncement of disposition to provide an incentive for the defendant to complete the recommended treatment successfully.

* **Sec. 6.** AS 33.05.020 is amended by adding a new subsection to read:

(f) The commissioner shall establish a program and eligibility requirements for certain offenders with conditions of probation that include not consuming controlled substances, inhalants, or alcoholic beverages and who have been identified as a high risk for violating their conditions of probation. The program shall

(1) include random urinalysis testing for controlled substance, inhalant,

1 and alcohol use;

2 (2) require that the probation officer file a petition to revoke probation
3 by the close of the next business day if a probationer fails to appear for a urinalysis
4 test or results of a urinalysis test are positive for controlled substances, inhalants, or
5 alcoholic beverages; and

6 (3) include a means to provide the court with prompt notice that a
7 petition to revoke probation has been filed on a probationer placed in the program by
8 the commissioner so that the court may review the petition, schedule a prompt hearing,
9 address a request for a warrant provided by the probation officer, or take other action
10 the court considers appropriate.

11 * **Sec. 7.** AS 33.16.060 is amended by adding a new subsection to read:

12 (c) The board shall establish a program for certain offenders with conditions
13 of parole that include not consuming controlled substances, inhalants, or alcoholic
14 beverages and who have been identified as a high risk for violating their conditions of
15 parole. The program must

16 (1) include random urinalysis testing for controlled substance, inhalant,
17 and alcohol use;

18 (2) require that a parole officer file a petition to revoke parole by the
19 close of the next business day if a parolee fails to appear for a urinalysis test or results
20 of a urinalysis test are positive for a controlled substances, inhalants, or alcoholic
21 beverages; and

22 (3) include a means to provide the board with prompt notice that a
23 petition to revoke parole has been filed on a parolee placed in the program by the
24 board so that the board may review the petition, schedule a prompt hearing, address a
25 request for a warrant provided by the parole officer, or take other action the board
26 considers appropriate.

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

29 **APPLICABILITY.** (a) The change made to AS 12.55.027(c), as amended by sec. 1 of
30 this Act, applies to offenses occurring on or after the effective date of this Act.

31 (b) The change made to AS 28.15.181(f), as amended by sec. 3 of this Act, the

1 changes made to AS 28.15.201, as amended by sec. 4 of this Act, and the change made to
2 AS 28.35.028(b), as amended by sec. 5 of this Act, apply to convictions occurring before, on,
3 or after the effective date of this Act for offenses occurring before, on, or after the effective
4 date of this Act.

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

7 TRANSITIONAL PROVISIONS. The initial appointments to the Alaska Sentencing
8 Commission under AS 22.20.510, added by sec. 2 of this Act, shall be made and the first
9 meeting of the commission shall be held not later than July 1, 2013. The first report required
10 under AS 22.20.560, added by sec. 2 of this Act, shall be submitted not later than January 1,
11 2014.

12 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).