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# 28<sup>th</sup> Alaska State Legislature



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## Senate Judiciary Committee

### **SECTIONAL ANALYSIS**

#### ***Senate Bill 64***

*Omnibus Crime/Corrections/Recidivism Bill*  
*Version V*

#### **Section 1:**

*This section provides legislative intent directing the court to treat, confidentially, records of criminal cases disposed of before the effective date of the Act by acquittal of all charges, dismissal of all charges, or acquittal of some charges and dismissal of remaining charges, to the same extent that records are held confidential by this bill under AS 22.35.030.*

#### **Section 2:**

*This section clarifies that a person commits the crime of custodial interference in the first degree if that person is a relative of the child and removes that child from the state and keeps the child from its legal custodian, despite not having a legal right to do so.*

#### **Section 3:**

*This section makes it a crime of custodial interference in the second degree if a non-relative of a child knowingly and unlawfully represents themselves as having a right, and has the intent to, take or keep a child. This section establishes a class A misdemeanor for an attempted child abduction, rather than the lesser crime of criminal mischief.*

#### **Section 4:**

*This section clarifies that an affirmative defense of necessity does not apply to a prosecution for custodial interference if the period for which the person held the child exceeded 24 hours if 24 hours is the amount of time necessary to report that the child has been neglected, abused, or is in physical danger.*

#### **Section 5:**

*This section will increase the minimum amount of property or services for the crime of theft in the second degree. Theft in the second degree is a class C felony and carries a maximum sentence of up to five years in prison and a fine of up to \$50,000.*

**Section 6:**

*This section will increase the minimum amount of property or services for the crime of theft in the third degree. Theft in the third degree is a class A misdemeanor and carries a term of imprisonment of not more than one year and a fine of up to \$10,000.*

**Section 7:**

*This section will increase the minimum amount of property or services for the crime of theft in the fourth degree. Theft in the fourth degree is a class B misdemeanor and is punishable by imprisonment of not more than 90 days and a fine of not more than \$2,000.*

**Section 8:**

*This section will increase the minimum amount of merchandise for the crime of concealment of merchandise for a class C felony, and class A and B misdemeanors.*

**Section 9:**

*This section will increase the minimum amount of property that identification marks are removed from for a class C felony and class A and B misdemeanors.*

**Section 10:**

*This section will increase the minimum amount of unlawful possession of property for a class C felony and class A and B misdemeanors.*

**Section 11:**

*This section will increase the minimum amount of a bad check for a class C felony and class A and B misdemeanors.*

**Section 12:**

*This section will increase the minimum amount of the fraudulent use of an access device for a class C felony and class A misdemeanor.*

**Section 13:**

*Clarifies that if the property crime felony threshold is adjusted, the new threshold does not retroactively apply to prior offenses.*

**Section 14:**

*This section will increase the minimum amount of property damage and expenses as a result of the loss of use of a vehicle.*

**Section 15:**

*This section will increase the minimum amount of property damage for the crime of criminal mischief in the third degree. Criminal mischief in the third degree is a class C felony.*

**Section 16:**

*This section will increase the minimum amount of property damage for the crime of criminal mischief in the fourth degree. Criminal mischief in the fourth degree is a class A misdemeanor.*

**Section 17:**

*This section will increase the minimum amount of property damage for the crime of criminal mischief in the fifth degree. Criminal mischief in the fifth degree is a class B misdemeanor.*

**Section 18:**

*This section will increase the minimum amount of property damage for the crime of criminal simulation for a class C felony and class A and B misdemeanors.*

**Section 19:**

*This section will increase the amount of the value of the property for the crime of misapplication of the value of property for a class C felony and class A misdemeanor.*

**Section 20:**

*This section will increase the minimum amount for the crime of defrauding creditors under certain conditions for a class A misdemeanor, and class C felony.*

**Section 21:**

*This section establishes a 24/7 Sobriety program that can be court-ordered for defendants out on bail who have been charged with alcohol-related or substance abuse-related offenses that are unclassified felonies, class A felonies, sexual felonies, or crimes involving domestic violence. The program requires twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.*

**Section 22:**

*This section establishes a 24/7 Sobriety program that can be court-ordered for defendants out on bail who have been charged with DUI or refusal. The program requires twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.*

**Section 23:**

*This section establishes a 24/7 Sobriety program that can be court-ordered for defendants out on bail who have been charged with crimes involving controlled substances or imitation controlled substances. The program requires twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.*

**Section 24:**

*An incarcerated person shall receive credit against a sentence of imprisonment for each day spent in a residential treatment facility, provided the person is confined at all times to the grounds of the facility, other than for employment, vocational training, community volunteer, or purposes directly related to the person's treatment, so long as the periods they are permitted to leave the facility are expressly limited as to both time and purpose by the treatment program.*

**Section 25:**

*This section establishes a 24/7 Sobriety program as a condition of probation that can be court-ordered, which includes twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.*

**Section 26:**

*This section establishes a new mitigating factor that allows a judge to take into consideration whether the offense was related to combat-related Post-Traumatic Stress Disorder (PTSD) or combat-related Traumatic Brain Injury (TBI). The offender has the burden of proving that he or she suffers from combat-related PTSD or TBI prior to it being considered for the purposes of sentencing. This mitigating factor is not applicable to arson or crimes against the person, such as murder and sexual offenses.*

**Section 27:**

*The judicial council shall provide staff and administrative support to the Alaska Criminal Justice Commission.*

### **Section 28:**

*This section establishes that a court record of a criminal case is confidential if 120 days have elapsed from the date of acquittal or dismissal and (1) the person was acquitted of all charges filed in the case; (2) all charges against the person have been dismissed by the prosecuting authority; or (3) the person was acquitted of some of the charges in the case, and the remaining charges were dismissed.*

*This section also provides exceptions for access to information made confidential for state agency employees responsible for health, safety, welfare, or placement of a child, a person with a physical or intellectual disability, or a person with a mental illness; employees that protect other vulnerable citizens, and state criminal justice information network users. The Department of Health and Social Services will adopt regulations to administer these exceptions.*

### **Section 29:**

*The court may terminate a license revocation for DUI or refusal if the person has successfully completed a court-ordered treatment program, has not been convicted of a DUI or refusal since completing the program, and has been granted a limited license and successfully driven under that limited license for three years without having those privileges revoked.*

### **Section 30:**

*The court or department may grant limited license privileges if the revocation is for DUI, and the person has successfully participated (for 6 months), or has successfully completed, a court-ordered treatment program, provides proof of insurance, is using an ignition interlock device, enrolls in alcohol screening, and participates in 24/7 Sobriety for a minimum of 120 days. The court or department may immediately revoke the limited license if the person is convicted of a DUI or refusal or is not in compliance with the court-ordered treatment program.*

### **Section 31:**

*Once the court elects to proceed with this limited license procedure, the defendant shall enter a plea of “no contest” or “guilty.” The state and the defendant may enter into a plea agreement and the court shall enter a judgment of conviction. In a judgment of conviction, 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.*

### **Section 32:**

*Imprisonment for a first-time DUI offense shall be served by either electronic monitoring, a community residential center, or another appropriate place determined by the commissioner of corrections.*

**Section 33:**

*Upon request, the department shall review a driver's license revocation for felony DUI and shall restore the driver's license if the person has been granted limited license privileges and has successfully driven under that limited license for three years without having those privileges revoked, the person has successfully complete a court-ordered treatment program, the person has not been convicted of a DUI or refusal since the license was revoked, and the person provides proof of insurance.*

**Section 34:**

*The commissioner shall establish the Probationer Accountability and Certain Enforcement (P.A.C.E.) program for felons with conditions of probation that include not consuming drugs or alcohol and who have been identified as being at moderate to high risk by a risk-needs assessment. The program shall include random drug and alcohol testing and requires a probation officer to file a petition to revoke probation by the next business day if the probationer fails to appear for an appointment or tests positive for drugs or alcohol.*

**Section 35:**

*This section directs the parole board to establish the Probationer Accountability and Certain Enforcement (P.A.C.E.) program for parolees with conditions of parole that include not consuming drugs or alcohol and who have been identified as being at moderate to high risk by a risk-needs assessment. The program shall include random drug and alcohol testing and requires a parole officer to file a parole violation report by the next business day if the parolee fails to appear for an appointment or tests positive for drugs or alcohol.*

**Section 36:**

*The parole board may require, as a condition of special medical or mandatory parole, a parolee must submit to the Probationer Accountability and Certain Enforcement (P.A.C.E.) program.*

**Section 37:**

*The commissioner shall establish a program to conduct assessments of the risks and needs of offenders sentenced to serve a term of incarceration of 30 days or more. The commissioner shall also provide an assessment or screening of offenders with fetal alcohol syndrome or another brain-based disorder. The department must provide a report summarizing the findings and results of the program.*

### **Section 38:**

*The Alaska Criminal Justice Commission is established in the Office of the Governor. The commission consists of 11 members as follows:*

- (1) the chief justice of the Alaska Supreme Court or another active or retired justice of the supreme court or court of appeals*
- (2) an active or retired superior court judge designated by the chief justice*
- (3) an active or retired district court judge designated by the chief justice*
- (4) a member of the Alaska Native community designated by the Alaska Native Justice Center*
- (5) the attorney general or designee*
- (6) the public defender*
- (7) a private attorney appointed by the governor*
- (8) a chief of a municipal law enforcement agency appointed by the governor*
- (9) a victims' rights advocate appointed by the governor*
- (10) one non-voting member of the senate appointed by the president of the senate*
- (11) one non-voting member of the house of representatives appointed by the speaker of the house of representatives*

*The commission shall elect a chair and the Alaska Judicial Council shall provide staff and administrative support to the commission.*

*Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized for boards and commissions.*

*A majority of the members constitutes a quorum for conducting business and exercising the powers of the commission.*

*The commission shall meet at least quarterly and shall keep a record of its proceedings and make these records available for public inspection.*

### **Sec. 44.19.645. Powers and duties of the commission.**

*The commission shall evaluate the effect of sentencing laws and practices on the criminal justice system. In formulating its recommendations, the commission shall consider:*

- (1) statutes and court rules*
- (2) sentencing practices*
- (3) uniformity and proportionality in sentencing*
- (4) alternatives to traditional incarceration*
- (5) the use of parole and probation*
- (6) the effectiveness and availability of rehabilitation programs*
- (7) crime and incarceration rates*
- (8) the relationship between sentencing priorities and correctional resources*

*(9) the effectiveness of the state's current methodologies for the collection and of data*

*The commission may retain the services of consultants to assist the commission.  
The commission may recommend legislative and administrative action.*

**Sec. 44.19.646. Methodology.**

*The commission shall solicit and consider information and views from a variety of constituencies and base recommendations on the following factors:*

- (A) the seriousness of each offense in relation to other offenses*
- (B) the effect of an offender's prior criminal history*
- (C) The need to rehabilitate criminal offenders*
- (D) The need to confine offenders to prevent harm to the public*
- (E) The extent to which criminal offenses harm victims and endanger public safety*
- (F) The effect of sentencing in deterring an offender or other members of society from future criminal conduct*
- (G) The effect of sentencing as a community condemnation and as an affirmation of societal norms*
- (H) The elimination of unjustified disparity in sentences*
- (I) The sufficiency of resources to administer the criminal justice system*
- (J) The effect of sentencing on reducing the rate of recidivism in the state*
- (K) Peer reviewed and data-driven research*
- (L) The effect of over-classification of prisoners*
- (M) The effects of evidence-based restorative justice initiatives*

*The commission shall submit to the governor and the legislature an annual report and recommendations by January 1 of each year.*

**Section 39:**

*This section establishes a sunset of June 30, 2017 for the Alaska Criminal Justice Commission.*

**Section 40:**

*The commissioner of health and social services, in cooperation with the commissioner of corrections, shall establish a program that includes not consuming controlled substances or alcohol beverages. The program requires twice-a-day testing, in person if practicable, and establishes a means to provide the probation officer, prosecutor's office, or local law enforcement a notice within 24 hours if an appointment is missed or a positive test occurs, so that a swift and certain sanction can be applied. The commissioner will establish financial guidelines that require the offender pay for the testing, based on financial ability.*

*Article 2 establishes the Recidivism Reduction Grant Fund within the Department of Health and Social Services. The commissioner shall work in cooperation with the Department of Corrections to make grants from the fund to programs that have, as a primary focus, rehabilitation and reduction of recidivism through transitional re-entry for persons recently released from correctional facilities. To qualify for a grant under this section, a program shall include case management, sober living, treatment, employment, and a cap on residential placements of 1 year. The commissioner shall prepare an annual report for the legislature by January 15 of each year.*

**Section 41:**

*Staffing for the Alaska Criminal Justice Commission expires when the commission expires (June 30, 2017).*

**Section 42:**

*APPLICABILITY*

**Section 43:**

*This section requires the Alaska Criminal Justice Commission to issue a special report to the governor and the legislature regarding AS Title 28. The report must include recommendations to improve policy and practices relating to the revision of AS 28, license revocations, ignition interlock devices, and treatment programs.*

**Section 44:**

*TRANSITIONAL PROVISIONS*

**Section 45:**

*This section clarifies that the Department of Corrections, the parole board, and the Department of Health and Social Services may begin adopting regulations to implement P.A.C.E. and 24/7 Sobriety immediately upon passage of this bill.*

**Section 46:**

*This section establishes an effective date for Section 28 (October 1, 2014).*

**Section 47:**

*This section establishes a delayed effective date for Section 29 (January 1, 2016).*

**Section 48:**

*This section clarifies that the Department of Health and Social Services, the parole board, and the Department of Corrections may begin adopting regulations to implement P.A.C.E. and 24/7 Sobriety immediately upon passage of this bill.*

**Section 49:**

*This section establishes an effective date of July 1, 2014 for the remaining sections of the bill.*