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Martin
2/27/17

CS FOR SENATE BILL NO. 54(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR COGHILL

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to crime and criminal law; relating to violation of condition of release;**
2 **relating to sex trafficking; relating to sentencing; relating to probation; relating to**
3 **driving without a license; relating to the pretrial services program; and providing for an**
4 **effective date."**

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

6 *** Section 1.** AS 11.56.757(a) is amended to read:

7 (a) A person commits the **crime** [OFFENSE] of violation of condition of
8 release if the person

- 9 (1) has been charged with a crime or convicted of a crime;
- 10 (2) has been released under AS 12.30; and
- 11 (3) violates a condition of release imposed by a judicial officer under
- 12 AS 12.30, other than the requirement to appear as ordered by a judicial officer.

13 *** Sec. 2.** AS 11.56.757(b) is amended to read:

14 (b) Violation of condition of release is a **class B misdemeanor** [VIOLATION

PUNISHABLE BY A FINE OF UP TO \$1,000].

* **Sec. 3.** AS 11.66.130(a) is amended to read:

(a) A person commits the crime of sex trafficking in the third degree if [, WITH INTENT TO PROMOTE PROSTITUTION,] the person

(1) receives compensation for prostitution services rendered by another; and

(2) with the intent to promote prostitution,

(A) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(B) [(2)] as other than a patron of a prostitute, induces or causes another person who is 20 years of age or older to engage in prostitution;

(C) [(3) AS OTHER THAN A PROSTITUTE RECEIVING COMPENSATION FOR PERSONALLY RENDERED PROSTITUTION SERVICES,] receives or agrees to receive money or other property under an agreement or understanding that the money or other property is derived from prostitution; or

(D) [(4)] engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

* **Sec. 4.** AS 11.66.135(a) is amended to read:

(a) A person commits the crime of sex trafficking in the fourth degree if the person

(1) receives compensation for prostitution services rendered by another; and

(2) engages in conduct that institutes, aids, or facilitates prostitution under circumstances not proscribed under AS 11.66.130(a)(2)(D) [AS 11.66.130(a)(4)].

* **Sec. 5.** AS 11.66.150 is amended by adding a new paragraph to read:

(4) "compensation" does not include any payment for reasonably apportioned shared expenses.

* **Sec. 6.** AS 12.55.125(e) is amended to read:

(e) Except as provided in (i) of this section, a defendant convicted of a class C

1 felony may be sentenced to a definite term of imprisonment of not more than five
2 years, and shall be sentenced to a definite term within the following presumptive
3 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

4 (1) if the offense is a first felony conviction and does not involve
5 circumstances described in (4) of this subsection, [PROBATION, WITH A
6 SUSPENDED TERM OF IMPRISONMENT OF] zero to 18 months; **an active term**
7 **of imprisonment within this range may not exceed 120 days**; a defendant sentenced
8 under this paragraph may, if the court finds it appropriate, be granted a suspended
9 imposition of sentence under AS 12.55.085;

10 (2) if the offense is a second felony conviction, one to three years;

11 (3) if the offense is a third felony conviction, two to five years;

12 (4) if the offense is a first felony conviction, and the defendant violated

13 (A) AS 08.54.720(a)(15), one to two years;

14 (B) AS 28.35.030(n)(1)(A) or 28.35.032(p)(1)(A), 120 days to
15 239 days;

16 (C) AS 28.35.030(n)(1)(B) or 28.35.032(p)(1)(B), 240 days to
17 359 days;

18 (D) AS 28.35.030(n)(1)(C) or 23.35.032(p)(1)(C), 360 days to
19 two years.

20 * **Sec. 7.** AS 12.55.125 is amended by adding a new subsection to read:

21 (q) Other than for convictions subject to a mandatory 99-year sentence, the
22 court shall impose, in addition to an active term of imprisonment imposed under (i) of
23 this section, a minimum period of (1) suspended imprisonment of five years and a
24 minimum period of probation supervision of 15 years for conviction of an unclassified
25 felony, (2) suspended imprisonment of three years and a minimum period of probation
26 supervision of 10 years for conviction of a class A or class B felony, or (3) suspended
27 imprisonment of two years and a minimum period of probation supervision of five
28 years for conviction of a class C felony. The period of probation is in addition to any
29 sentence received under (i) of this section.

30 * **Sec. 8.** AS 12.55.135(a) is amended to read:

31 (a) A defendant convicted of a class A misdemeanor may be sentenced to a

definite term of imprisonment of not more than

(1) one year, if the

(A) conviction is for a crime with a mandatory minimum term of 30 days or more of active imprisonment;

(B) trier of fact finds the aggravating factor that the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(C) defendant has **previously been convicted two or more times** [PAST CRIMINAL CONVICTIONS] for conduct violative of criminal laws, punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced;

(D) conviction is for an assault in the fourth degree under AS 11.41.230; or

(E) conviction is for a violation of

(i) AS 11.41.427;

(ii) AS 11.41.440;

(iii) AS 11.41.460, if the indecent exposure is before a person under 16 years of age; [OR]

(iv) **AS 11.61.116(c)(2); or**

(v) AS 11.61.118(a)(2);

(2) **60 days, if the defendant has one previous conviction for conduct violative of criminal laws, punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced;**

(3) 30 days.

* **Sec. 9.** AS 12.55.135(b) is amended to read:

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than

(1) 10 days unless otherwise specified in the provision of law defining the offense or in this section;

(2) 90 days if the conviction is for a violation of

(A) AS 11.61.116(c)(1) and the person is 21 years of age or

1 older; or

2 (B) AS 11.61.120(a)(6) and the person is 21 years of age or

3 older; or

4 **(3) five days if the conviction is for a violation of AS 11.56.757.**

5 * **Sec. 10.** AS 12.55.135(l) is amended to read:

6 (l) A court sentencing a person convicted of theft in the fourth degree under
7 AS 11.46.150, concealment of merchandise under AS 11.46.220(c)(3), removal of
8 identification marks under AS 11.46.260(b)(3), unlawful possession under
9 AS 11.46.270(b)(3), issuing a bad check under AS 11.46.280(d)(4), or criminal
10 simulation under AS 11.46.530(b)(3) may not impose

11 (1) a sentence of more than **10** [FIVE] days of **active** [SUSPENDED]
12 imprisonment and a term of probation of more than six months if the person has
13 previously been convicted two or more times of an offense under AS 11.46.110 -
14 11.46.220, 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of
15 this or another jurisdiction with substantially similar elements; or

16 (2) a sentence of active or suspended imprisonment **and a term of**
17 **probation of more than six months** if the person has not been previously convicted,
18 or has previously been convicted once, of an offense under AS 11.46.110 - 11.46.220,
19 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of this or another
20 jurisdiction with substantially similar elements.

21 * **Sec. 11.** AS 12.55.135(p) is amended to read:

22 (p) If the state seeks to establish an aggravating factor at sentencing

23 (1) under (a)(1)(C) **or (a)(2)** of this section, written notice must be
24 served on the opposing party and filed with the court not later than 10 days before the
25 date set for imposition of sentence; the aggravating factor in (a)(1)(C) **or (a)(2)** of this
26 section must be established by clear and convincing evidence before the court sitting
27 without a jury; all findings must be set out with specificity;

28 (2) an aggravating factor under (a)(1)(B) of this section shall be
29 presented to a trial jury under procedures set by the court, unless the defendant waives
30 trial by jury, stipulates to the existence of the factor, or consents to have the factor
31 proven under procedures set out in (1) of this subsection; an aggravating factor

1 presented to a jury is established if proved beyond a reasonable doubt; written notice
2 of the intent to establish an aggravating factor must be served on the defendant and
3 filed with the court

4 (A) not later than 10 days before trial or at a time specified by
5 the court;

6 (B) not later than 48 hours, or at a time specified by the court,
7 if the court instructs the jury about the option to return a verdict for a lesser
8 included offense; or

9 (C) not later than five days before entering a plea that results in
10 a finding of guilt or at a time specified by the court unless the defendant
11 waives the notice requirement.

12 * **Sec. 12.** AS 12.55.145(a) is amended to read:

13 (a) For purposes of considering prior convictions in imposing sentence under

14 (1) AS 12.55.125(c), (d), or (e),

15 (A) a prior conviction may not be considered if a period of 10
16 or more years has elapsed between the date of the defendant's unconditional
17 discharge on the immediately preceding offense and commission of the present
18 offense unless the prior conviction was for an unclassified or class A felony;

19 (B) a conviction in this or another jurisdiction of an offense
20 having elements similar to those of a felony defined as such under Alaska law
21 at the time the offense was committed is considered a prior felony conviction;

22 (C) two or more convictions arising out of a single, continuous
23 criminal episode during which there was no substantial change in the nature of
24 the criminal objective are considered a single conviction unless the defendant
25 was sentenced to consecutive sentences for the crimes; offenses committed
26 while attempting to escape or avoid detection or apprehension after the
27 commission of another offense are not part of the same criminal episode or
28 objective;

29 (2) AS 12.55.125(l),

30 (A) a conviction in this or another jurisdiction of an offense
31 having elements similar to those of a most serious felony is considered a prior

1 most serious felony conviction;

2 (B) commission of and conviction for offenses relied on as
3 prior most serious felony offenses must occur in the following order:
4 conviction for the first offense must occur before commission of the second
5 offense, and conviction for the second offense must occur before commission
6 of the offense for which the defendant is being sentenced;

7 (3) AS 12.55.135(g),

8 (A) a prior conviction may not be considered if a period of five
9 or more years has elapsed between the date of the defendant's unconditional
10 discharge on the immediately preceding offense and commission of the present
11 offense unless the prior conviction was for an unclassified or class A felony;

12 (B) a conviction in this or another jurisdiction of an offense
13 having elements similar to those of a crime against a person or a crime
14 involving domestic violence is considered a prior conviction;

15 (C) two or more convictions arising out of a single, continuous
16 criminal episode during which there was no substantial change in the nature of
17 the criminal objective are considered a single conviction unless the defendant
18 was sentenced to consecutive sentences for the crimes; offenses committed
19 while attempting to escape or avoid detection or apprehension after the
20 commission of another offense are not part of the same criminal episode or
21 objective;

22 (4) AS 12.55.125(i),

23 (A) a conviction in this or another jurisdiction of an offense
24 having elements similar to those of a sexual felony is a prior conviction for a
25 sexual felony;

26 (B) a felony conviction in another jurisdiction making it a
27 crime to commit any lewd and lascivious act upon a child under the age of 16
28 years, with the intent of arousing, appealing to, or gratifying the sexual desires
29 of the defendant or the victim is a prior conviction for a sexual felony;

30 (C) two or more convictions arising out of a single, continuous
31 criminal episode during which there was no substantial change in the nature of

1 the criminal objective are considered a single conviction unless the defendant
2 was sentenced to consecutive sentences for the crimes; offenses committed
3 while attempting to escape or avoid detection or apprehension after the
4 commission of another offense are not part of the same criminal episode or
5 objective;

6 **(5) AS 12.55.135(a),**

7 **(A) a prior conviction may not be considered if a period of**
8 **five or more years has elapsed between the date of the defendant's**
9 **unconditional discharge on the immediately preceding offense and**
10 **commission of the present offense unless the prior conviction was for an**
11 **unclassified or class A felony;**

12 **(B) a conviction in this or another jurisdiction of an offense**
13 **having elements similar to those of a felony or misdemeanor defined as**
14 **such under Alaska law at the time the offense was committed is considered**
15 **a prior conviction;**

16 **(C) two or more convictions arising out of a single,**
17 **continuous criminal episode during which there was no substantial change**
18 **in the nature of the criminal objective are considered a single conviction**
19 **unless the defendant was sentenced to consecutive sentences for the**
20 **crimes; offenses committed while attempting to escape or avoid detection**
21 **or apprehension after the commission of another offense are not part of**
22 **the same criminal episode or objective.**

23 * **Sec. 13.** AS 12.63.100(6) is amended to read:

24 (6) "sex offense" means

25 (A) a crime under AS 11.41.100(a)(3), or a similar law of
26 another jurisdiction, in which the person committed or attempted to commit a
27 sexual offense, or a similar offense under the laws of the other jurisdiction; in
28 this subparagraph, "sexual offense" has the meaning given in
29 AS 11.41.100(a)(3);

30 (B) a crime under AS 11.41.110(a)(3), or a similar law of
31 another jurisdiction, in which the person committed or attempted to commit

one of the following crimes, or a similar law of another jurisdiction:

- (i) sexual assault in the first degree;
- (ii) sexual assault in the second degree;
- (iii) sexual abuse of a minor in the first degree; or
- (iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

- (i) AS 11.41.410 - 11.41.438;
- (ii) AS 11.41.440(a)(2);
- (iii) AS 11.41.450 - 11.41.458;
- (iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;
- (v) AS 11.61.125 - 11.61.128;
- (vi) AS 11.66.110 or **11.66.130(a)(2)(B)** [11.66.130(a)(2)] if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense;
- (vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200;
- (viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; or
- (ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(c);

* **Sec. 14.** AS 18.67.101 is amended to read:

Sec. 18.67.101. Incidents and offenses to which this chapter applies. The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

- (1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

1 (2) the commission or attempt on the part of one other than the
2 applicant to commit any of the following offenses:

3 (A) murder in any degree;

4 (B) manslaughter;

5 (C) criminally negligent homicide;

6 (D) assault in any degree;

7 (E) kidnapping;

8 (F) sexual assault in any degree;

9 (G) sexual abuse of a minor;

10 (H) robbery in any degree;

11 (I) threats to do bodily harm;

12 (J) driving while under the influence of an alcoholic beverage,
13 inhalant, or controlled substance or another crime resulting from the operation
14 of a motor vehicle, boat, or airplane when the offender is under the influence
15 of an alcoholic beverage, inhalant, or controlled substance;

16 (K) arson in the first degree;

17 (L) sex trafficking in violation of AS 11.66.110 or
18 **11.66.130(a)(2)(B)** [11.66.130(a)(2)];

19 (M) human trafficking in any degree; or

20 (N) unlawful exploitation of a minor.

21 * **Sec. 15.** AS 28.15.011 is amended by adding a new subsection to read:

22 (d) Violation of (b) of this section is an infraction.

23 * **Sec. 16.** AS 29.25.070(g) is amended to read:

24 (g) If a municipality prescribes a penalty for a violation of a municipal
25 ordinance, including a violation under (a) of this section, and there is a comparable
26 state **crime** [OFFENSE] under AS 11 or AS 28 with elements that are similar to the
27 municipal ordinance, the municipality may not impose a greater punishment than that
28 imposed for a violation of the state **crime** [LAW]. This subsection applies to home
29 rule and general law municipalities.

30 * **Sec. 17.** AS 33.07.010, enacted by sec. 117, ch. 36, SLA 2016, is amended to read:

31 **Sec. 33.07.010. Pretrial services program; establishment.** The commissioner

1 shall establish and administer a pretrial services program that provides a pretrial risk
2 assessment for all defendants **detained in custody in a correctional facility**
3 **following arrest and for any defendant for whom the prosecution requests to**
4 **have a pretrial risk assessment at the next hearing or arraignment. The pretrial**
5 **services program shall make** [,] recommendations to the court concerning pretrial
6 release decisions, and **provide** supervision of defendants released while awaiting trial
7 as ordered by the court.

8 * **Sec. 18.** AS 33.07.030(a) is amended to read:

9 (a) Pretrial services officers shall, in advance of a first appearance before a
10 judicial officer under AS 12.30, conduct a pretrial risk assessment on the defendant
11 using an instrument approved by the commissioner for the purpose of making a
12 recommendation to the court concerning an appropriate pretrial release decision and
13 conditions of release. In conducting a pretrial risk assessment and making a
14 recommendation to the court, the pretrial services officer shall follow the decision-
15 making process established by regulation under this chapter. The pretrial risk
16 assessment shall be completed and presented to the court, **the prosecution, and the**
17 **defendant** in a pretrial release report that contains a risk assessment rating of low,
18 moderate, or high and a recommendation regarding release and release conditions,
19 including a recommendation concerning a defendant's dependency on, abuse of, or
20 addiction to alcohol or controlled substances, to the extent those factors are indicated
21 by the offense or criminal history, before the defendant's first appearance before a
22 judicial officer.

23 * **Sec. 19.** AS 34.03.360(10) is amended to read:

24 (10) "illegal activity involving a place of prostitution" means a
25 violation of AS 11.66.120(a)(1) or **11.66.130(a)(2)(A) or (D)** [11.66.130(a)(1) OR
26 (4)];

27 * **Sec. 20.** AS 11.66.130(b), 11.66.135(b); AS 12.55.125(e)(4)(B), 12.55.125(e)(4)(C), and
28 12.55.125(e)(4)(D) are repealed.

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

31 **APPLICABILITY.** (a) The following sections apply to offenses committed on or after

1 the effective date of those sections:

- 2 (1) AS 11.56.757(a), as amended by sec. 1 of this Act;
- 3 (2) AS 11.56.757(b), as amended by sec. 2 of this Act;
- 4 (3) AS 11.66.130(a), as amended by sec. 3 of this Act;
- 5 (4) AS 11.66.135(a), as amended by sec. 4 of this Act;
- 6 (5) AS 11.66.150(4), enacted by sec. 5 of this Act; and
- 7 (6) AS 28.15.011(d), enacted by sec. 15 of this Act.

8 (b) The following sections apply to sentences imposed on or after the effective date of
9 those sections for conduct occurring on or after the effective date of those sections:

- 10 (1) AS 12.55.125(e), as amended by sec. 6 of this Act;
- 11 (2) AS 12.55.125(q), enacted by sec. 7 of this Act;
- 12 (3) AS 12.55.135(a), as amended by sec. 8 of this Act;
- 13 (4) AS 12.55.135(b), as amended by sec. 9 of this Act;
- 14 (5) AS 12.55.135(l), as amended by sec. 10 of this Act;
- 15 (6) AS 12.55.135(p), as amended by sec. 11 of this Act; and
- 16 (7) AS 12.55.145(a), as amended by sec. 12 of this Act.

17 * **Sec. 22.** Sections 17 and 18 of this Act take effect January 1, 2018.

18 * **Sec. 23.** Except as provided in sec. 22 of this Act, this Act takes effect immediately under
19 AS 01.10.070(c).