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Martin
3/17/17

CS FOR SENATE BILL NO. 55(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to criminal law and procedure; relating to controlled substances;**
2 **relating to sentencing; relating to protective orders; relating to restitution; relating to**
3 **the period of probation; relating to revocation, termination, suspension, cancellation, or**
4 **restoration of a driver's license; relating to parole; relating to the duties of the**
5 **Department of Corrections and the Department of Health and Social Services; and**
6 **providing for an effective date."**

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

8 *** Section 1.** AS 11.46.280(d) is amended to read:

9 (d) Issuing a bad check is

10 (1) a class B felony if the face amount of the check [, ADJUSTED
11 FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$25,000 or more;

12 (2) a class C felony if the face amount of the check, adjusted for
13 inflation as provided in AS 11.46.982, is \$1,000 or more but less than \$25,000;

(3) a class A misdemeanor if the face amount of the check, adjusted for inflation as provided in AS 11.46.982, is \$250 or more but less than \$1,000;

(4) a class B misdemeanor if the face amount of the check, adjusted for inflation as provided in AS 11.46.982, is less than \$250.

* **Sec. 2.** AS 11.46.285(b) is amended to read:

(b) Fraudulent use of an access device is

(1) a class B felony if the value of the property or services obtained [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$25,000 or more;

(2) a class C felony if the value of the property or services obtained, adjusted for inflation as provided in AS 11.46.982, is \$1,000 or more but less than \$25,000;

(3) a class A misdemeanor if the value of the property or services obtained, adjusted for inflation as provided in AS 11.46.982, is less than \$1,000.

* **Sec. 3.** AS 11.46.730(c) is amended to read:

(c) Defrauding creditors is a class A misdemeanor unless that secured party, judgment creditor, or creditor incurs a pecuniary loss, adjusted for inflation as provided in AS 11.46.982, of \$1,000 or more as a result of the defendant's conduct, in which case defrauding secured creditors is

(1) a class B felony if the loss [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$25,000 or more;

(2) a class C felony if the loss, adjusted for inflation as provided in AS 11.46.982, is \$1,000 or more but less than \$25,000.

* **Sec. 4.** AS 11.71.050(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance;

(2) [REPEALED]

(3) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30; or

(4) under circumstances not proscribed under AS 11.71.030(a)(3), 11.71.040(a)(3), 11.71.040(a)(4), [AS 11.71.040(a)(3)] or 11.71.060(a)(2) [11.71.060(a)(2)(B)], possesses any amount of a schedule IA, IIA, IIIA, IVA, VA, or VIA controlled substance.

* **Sec. 5.** AS 12.55.011(b) is amended to read:

(b) At the time of sentencing, the court shall, if practicable, provide the victim with a form that

(1) provides information on

(A) whom the victim should contact if the victim has questions about the sentence or release of the offender;

(B) the potential for release of the offender on furlough, probation, or parole or for good time credit; and

(2) allows the victim to update the victim's contact information with the court, the Victim Information and Notification Everyday service, and the Department of Corrections.

* **Sec. 6.** AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend entry of judgment under AS 12.55.078 or suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged;

(13) order the defendant to refrain from consuming alcoholic beverages for a period of time.

* **Sec. 7.** AS 12.55.045(*l*) is amended to read:

(*l*) An order by the court that the defendant pay restitution is a civil judgment for the amount of the restitution. An order by the court that the defendant pay restitution when the court suspends entry of judgment under AS 12.55.078 or suspends imposition of sentence under AS 12.55.085 is a civil judgment for the amount of the restitution and remains enforceable and is not discharged when the proceeding is dismissed under AS 12.55.078 or a conviction is set aside under AS 12.55.085. The victim or the state on behalf of the victim may enforce the judgment through any procedure authorized by law for the enforcement of a civil judgment. If the victim enforces or collects restitution through civil process, collection

costs and full reasonable attorney fees shall be awarded. If the state on the victim's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated. This section does not limit the authority of the court to enforce orders of restitution.

* **Sec. 8.** AS 12.55.078(a) is amended to read:

(a) Except as provided in (f) of this section, if a person is found guilty or pleads guilty to a crime, the court may, with the consent of the defendant and the prosecution and without imposing or entering a judgment of guilt, defer further proceedings and place the person on probation. The period of probation may not exceed the applicable terms set out in AS 12.55.090(c). **The court may not impose a sentence of imprisonment under this section.**

* **Sec. 9.** AS 12.55.078(d) is amended to read:

(d) If the court finds that the person has successfully completed probation, the court shall, at the end of the probationary period set by the court, or at any time after the expiration of one year from the date [OF] the original probation **was imposed**, discharge the person and dismiss the proceedings against the person. **A person who is discharged under this section is not convicted of a crime.**

* **Sec. 10.** AS 12.55.078(f) is amended to read:

(f) The court may not suspend the imposition or entry of judgment and may not defer prosecution under this section of a person who

(1) is **charged with** [CONVICTED OF] a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, AS 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135;

(2) uses a firearm in the commission of the offense for which the person is **charged** [CONVICTED];

(3) has previously been granted a suspension of judgment under this section or a similar statute in another jurisdiction, unless the court enters written findings that by clear and convincing evidence the person's prospects for rehabilitation are high and suspending judgment under this section adequately protects the victim of the offense, if any, and the community;

(4) is **charged with** [CONVICTED OF] a violation of AS 11.41.230, 11.41.250, or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if

(A) the charges were dismissed under this section;

(B) the conviction has been set aside under AS 12.55.085; or

(C) the charge or conviction was dismissed or set aside under an equivalent provision of the laws of another jurisdiction; or

(5) **is charged with** [HAS BEEN CONVICTED OF] a crime involving domestic violence, as defined in AS 18.66.990.

* **Sec. 11.** AS 12.55.090(c) is amended to read:

(c) The period of probation, together with any extension, may not exceed

(1) 15 years for a felony sex offense;

(2) 10 years for an unclassified felony under AS 11 **not listed in (1) of this subsection;**

(3) five years for a felony offense not listed in (1) or (2) of this subsection;

(4) three years for a misdemeanor offense

(A) under AS 11.41;

(B) that is a crime involving domestic violence; or

(C) that is a sex offense, as that term is defined in AS 12.63.100;

(5) two years for a misdemeanor offense under AS 28.35.030 or 28.35.032, if the person has previously been convicted of an offense under AS 28.35.030 or 28.35.032, or a similar law or ordinance of this or another jurisdiction; or

(6) one year for an offense not listed in (1) - (5) of this subsection.

* **Sec. 12.** AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective

orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to \$25,000 [\$10,000]."

* **Sec. 13.** AS 18.66.130(d) is amended to read:

(d) In addition to other required information contained in a protective order, the order must include in bold face type the following statements:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a \$25,000 [\$10,000] fine";

(2) "If you are ordered to have no contact with the petitioner or to stay away from the petitioner's residence, vehicle, or other place designated by the court, an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

* **Sec. 14.** AS 28.15.165(e) is amended to read:

(e) A person whose driver's license, privilege to drive, or privilege to obtain a license has been revoked under this section as a result of a refusal to submit to a chemical test authorized under AS 28.35.031(a) or (g) or a similar municipal ordinance or a chemical test administered under AS 28.35.031(a) or (g) or a similar municipal ordinance in which the test produced a result described in AS 28.35.030(a)(2) may request that the department rescind the revocation. The department shall rescind a revocation under this subsection if the department finds that the person has supplied proof in a form satisfactory to the department that

(1) the person has been acquitted of driving while under the influence under AS 28.35.030, refusal to submit to a chemical test under AS 28.35.032, or a similar municipal ordinance for the incident on which the revocation was based; or

(2) all criminal charges against the person for driving while under the influence under AS 28.35.030 or a similar municipal ordinance and refusing to submit

1 to a chemical test under AS 28.35.032 or a similar municipal ordinance in relation to
2 the incident on which the revocation is based have been dismissed [WITHOUT
3 PREJUDICE].

4 * **Sec. 15.** AS 44.19.645(g) is amended to read:

5 (g) The Department of Corrections shall report quarterly to the working group
6 authorized in (b)(3) of this section. The report shall include the following information:

7 (1) data on pretrial decision making and outcomes, including
8 information on pretrial detainees admitted for a new criminal charge; detainees
9 released at any point before case resolution; time spent detained before first release or
10 case resolution; pretrial defendant risk level and charge; pretrial release
11 recommendations made by pretrial services officers; pretrial conditions imposed on
12 pretrial detainees by judicial officers, including amount of bail, and supervision
13 conditions; and information on pretrial outcomes, including whether or not the
14 defendant appeared in court or was re-arrested during the pretrial period;

15 (2) data on offenders admitted to the Department of Corrections for a
16 new criminal conviction, including the offense type, number of prior felony
17 convictions, sentence length, and length of stay;

18 (3) data on the population of the Department of Corrections, using a
19 one-day snapshot on the first day of the first month of each quarter, broken down by
20 type of admission, offense type, and risk level;

21 (4) data on offenders on probation supervised by the Department of
22 Corrections, including the total number of offenders supervised using a one-day
23 snapshot on the first month of each quarter; admissions to probation; assignments to a
24 program under AS 33.05.020(f); probation sentence length; time served on the
25 sentence; whether probation was successfully completed, any new convictions for a
26 felony offense, and any sentences to a term of imprisonment while on probation;

27 (5) data on parole, including the number of offenders supervised on
28 parole, using a one-day snapshot on the first month of each quarter; the number of
29 parole hearings; the parole grant rate and number of parolees released on
30 administrative, discretionary, and special medical parole; and information on parolees,
31 including time spent on parole, whether parole was successfully completed, any new

convictions for a new felony offense, and any sentences to a term of imprisonment while on parole;

(6) data on the implementation of policies from the 2015 justice reinvestment report, including the number and percentage of offenders who earn compliance credits under AS 33.05.020(h) or AS 33.16.270 in one or more months, and the total amount of credits earned; the average number of sanctions issued under AS 33.05.020(g) before a petition to revoke probation or parole is filed; and the most common violations of probation or parole; and

(7) data on probation and parole revocations, including information on probationers and parolees admitted for a supervision violation pre-case and post-case resolution; probationers and parolees admitted solely for a technical violation; probationers and parolees admitted for a new arrest; the number of previous revocations on the current sentence, if any; the length of time held pre-case resolution; the length of time to case resolution; and the length of stay.

* **Sec. 16.** AS 47.37.040 is amended to read:

Sec. 47.37.040. Duties of department. The department shall

(1) develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and drug abuse and treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers in cooperation with public and private agencies, organizations, and individuals, and provide technical assistance and consultation services for these purposes;

(2) coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism, drug abuse, and inhalant abuse, and treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers;

(3) cooperate with the Department of Corrections in establishing and conducting programs to provide treatment for alcoholics, intoxicated persons, drug abusers, and inhalant abusers in or on parole from penal institutions;

(4) cooperate with the Department of Education and Early Development, school boards, schools, police departments, courts, and other public and private agencies, organizations, and individuals in establishing programs for the

1 prevention of alcoholism, drug abuse, and inhalant abuse, and treatment of alcoholics,
2 intoxicated persons, drug abusers, and inhalant abusers, and preparing curriculum
3 materials for use at all levels of school education;

4 (5) prepare, publish, evaluate, and disseminate educational material
5 dealing with the nature and effects of alcohol and drugs, and the misuse of hazardous
6 volatile substances;

7 (6) develop and implement, as an integral part of treatment programs,
8 an educational program for use in the treatment of alcoholics, intoxicated persons,
9 drug abusers, and inhalant abusers that includes the dissemination of information
10 concerning the nature and effects of alcohol, drugs, and hazardous volatile substances;

11 (7) organize and foster training programs for all persons engaged in
12 treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers, and
13 establish standards for training paraprofessional alcoholism, drug abuse, and inhalant
14 abuse workers;

15 (8) sponsor and encourage research into the causes and nature of
16 alcoholism, drug abuse, and inhalant abuse, and the treatment of alcoholics,
17 intoxicated persons, drug abusers, and inhalant abusers, and serve as a clearinghouse
18 for information relating to alcoholism, drug abuse, and inhalant abuse;

19 (9) specify uniform methods for keeping statistical information by
20 public and private agencies, organizations, and individuals, and collect and make
21 available relevant statistical information, including number of persons treated,
22 frequency of admission and readmission, and frequency and duration of treatment;

23 (10) conduct program planning activities approved by the Advisory
24 Board on Alcoholism and Drug Abuse;

25 (11) review all state health, welfare, and treatment plans to be
26 submitted for federal funding, and advise the commissioner on provisions to be
27 included relating to alcoholics, intoxicated persons, drug abusers, and inhalant
28 abusers;

29 (12) assist in the development of, and cooperate with, alcohol, drug
30 abuse, and inhalant abuse education and treatment programs for employees of state
31 and local governments and businesses and industries in the state;

(13) use the support and assistance of interested persons in the community, particularly recovered alcoholics, drug abusers, and inhalant abusers, to encourage alcoholics, drug abusers, and inhalant abusers to voluntarily undergo treatment;

(14) cooperate with the Department of Public Safety and the Department of Transportation and Public Facilities in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while under the influence of an alcoholic beverage, inhalant, or controlled substance, and develop and approve alcohol information courses required to be taken by drivers under AS 28.15 or made available to drivers to reduce points assessed for violation of traffic laws;

(15) encourage hospitals and other appropriate health facilities to admit without discrimination alcoholics, intoxicated persons, drug abusers, and inhalant abusers and to provide them with adequate and appropriate treatment;

(16) encourage all health insurance programs to include alcoholism and drug abuse as a covered illness;

(17) prepare an annual report covering the activities of the department and notify the legislature that the report is available;

(18) develop and implement a training program on alcoholism and drug abuse for employees of state and municipal governments, and private institutions;

(19) develop curriculum materials on drug and alcohol abuse and the misuse of hazardous volatile substances for use in grades kindergarten through 12, as well as a course of instruction for teachers to be charged with presenting the curriculum;

(20) develop and implement or designate, in cooperation with other state or local agencies, a juvenile alcohol safety action program that provides alcohol and substance abuse screening, referral, and monitoring of persons under 18 years of age who have been referred to it by

(A) a court in connection with a charge or conviction of a violation or misdemeanor related to the use of alcohol or a controlled substance;

(B) the agency responsible for the administration of motor vehicle laws in connection with a license action related to the use of alcohol or a controlled substance; or

(C) department staff after a delinquency adjudication that is related to the use of alcohol or a controlled substance;

(21) develop and implement, or designate, in cooperation with other state or local agencies, an alcohol safety action program that provides services to persons who have been referred by a court under AS 04.16.049, 04.16.050, AS 28.35.028, 28.35.030, or 28.35.032, or referred by an agency of the state with the responsibility for administering motor vehicle laws in connection with a driver's license action involving the use of alcohol or a controlled substance;

(22) whenever possible, apply evidence-based, research-based, and consensus-based substance abuse and co-occurring substance abuse and mental health disorders treatment practices and remove barriers that prevent the use of those practices;

(23) collaborate with first responders, hospitals, schools, primary care providers, developmental disability treatment providers, law enforcement, corrections, attorneys, the Alaska Court System, community behavioral treatment providers, Alaska Native organizations, and federally funded programs in implementing programs for co-occurring substance abuse and mental health disorders treatment.

* **Sec. 17.** AS 33.16.120(h) is repealed.

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

APPLICABILITY. (a) The following sections apply to offenses committed on or after the effective date of those sections:

- (1) AS 11.46.280(d), as amended by sec. 1 of this Act;
- (2) AS 11.46.285(b), as amended by sec. 2 of this Act;
- (3) AS 11.46.730(c), as amended by sec. 3 of this Act; and
- (4) AS 11.71.050(a), as amended by sec. 4 of this Act.

(b) AS 12.55.078(a), as amended by sec. 8 of this Act, AS 12.55.078(d), as amended by sec. 9 of this Act, and AS 12.55.078(f), as amended by sec. 10 of this Act, apply to

prosecutions occurring on or after the effective date of secs. 8 - 10 of this Act, for offenses committed before, on, or after the effective date of secs. 8 - 10 of this Act.

(c) AS 12.55.090(c), as amended by sec. 11 of this Act, applies to probation ordered on or after the effective date of sec. 11 of this Act for offenses committed before, on, or after the effective date of sec. 11 of this Act.

(d) AS 28.15.165(e), as amended by sec. 14 of this Act, applies to a revocation of a driver's license, privilege to drive, or privilege to obtain a license, or to an identification card or driver's license issued to a parolee, occurring before, on, or after the effective date of sec. 14 of this Act for conduct occurring before, on, or after the effective date of sec. 14 of this Act.

*** Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY OF SECS. 148 AND 151, CH. 36, SLA 2016. (a) Nothing in the provisions of AS 33.16.220(i) may be construed as invalidating a decision of the Board of Parole, issued before January 1, 2017, that extended the period of supervision beyond the maximum release date on the original sentence.

(b) Nothing in the provisions of AS 33.16.270 may be construed as applying to credit for time served on parole before January 1, 2017.

*** Sec. 20.** This Act takes effect immediately under AS 01.10.070(c).