

# LEGAL SERVICES

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## MEMORANDUM

October 27, 2017

**SUBJECT:** HCS CSSB 54(JUD) (Work Order No. 30-LS0461\T)

**TO:** Representative Matt Claman  
Chair of the House Judiciary Committee  
Attn: Lizzie Kubitz

**FROM:** Hilary V. Martin   
Legislative Counsel

Attached is the HCS CSSB 54(JUD) you requested.

This HCS changes the title of the bill in the second house, therefore a title change resolution is required for this HCS.

I want to draw your attention to the many places in the bill that now address recidivism theft. Amendment N.23 makes it theft in the third degree if the person commits theft in the fourth degree and has two or more prior convictions for theft. The bill also adds provisions to AS 12.55.135(a) that provides for increased penalties for class A misdemeanors based on prior convictions. Third, the bill is amending AS 12.55.135(l) and providing for increased penalties for multiple convictions for fourth degree theft.

This seeming overlap between third and fourth degree theft would give the prosecution discretion to determine whether to charge someone with the greater or lesser crime. This would allow for broad prosecutorial discretion that possibly could lead to criminal defendants claiming equal protection violations. One way to alleviate this issue would be to add language to theft in the fourth degree (AS 11.46.150) to state "under circumstances not proscribed under AS 11.46.140(a)(4). This would make it clear that a three-time recidivist theft defendant is subject to prosecution under AS 11.46.140. You should carefully review these sections to ensure it complies with the committee's intent.

Please review the language in AS 47.37.040(21) carefully. This amendment was conceptually amended by the committee. I was unclear why the second use of "referred by a court" was retained in the conceptual amendment. The language does not currently allow for a court to refer felony crimes involving the use of alcohol or controlled substances to ASAP. Another possibility is to leave the second "referred by a court" in the amendment and add commas so a court could refer to ASAP for a driver's license action involving the use of alcohol or a controlled substance (this would conceivably

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allow an ASAP referral anytime a court revokes a driver's license for a felony or misdemeanor offense).

If I may be of further assistance, please advise.

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Attachment