

**HB 49 – CRIMES; SENTENCING; MENTAL ILLNESS; EVIDENCE
SECTIONAL ANALYSIS**

February 20, 2019

Summary: This bill returns a number of statutes to where they were prior to July 2016. It reenacts a class A felony level drug distribution statute and focuses on the type of drug being distributed instead of the amount. The 30-day grace period allowed before a person could be charged with a crime for failing to appear for a court hearing is eliminated. Presumptive sentencing ranges for felonies are increased by approximately 2 years. Misdemeanor sentencing ranges are also increased to up to 1 year for a class A misdemeanor and up to 90 days for a class B misdemeanor. The bill also requires the Alaska Court System to transmit information regarding individuals who have been involuntarily committed since October 1, 1981 to the Department of Public Safety. Finally, the bill allows a person's rap sheet to be used at grand jury to prove the existence of prior convictions when prior convictions are an element of the offense.

Section 1 Clean up language. Aligns murder in the second degree when a person dies during the course of a drug deal with the changes made to the drug statutes later in the bill.

Section 2 Clean up language. Same change that is made in sec. 1 is made in sec. 2 for murder of an unborn child in the second degree.

Section 3 - 10 Removes inflation adjustment from property crime statutes.

Section 11 Defines "prior convictions" when evaluating the existence of prior convictions in the recidivist theft statutes.

Section 12 – 18 Removes inflation adjustment from property crime statutes.

Section 19 Adds to the crime of escape in the second degree persons who are under the jurisdiction of the Commissioner of Health and Social Services for a felony and restricted to the residence then leave their residence without permission.

Section 20 Makes it a class C felony to remove an electronic monitoring device or leave a person's residence while under official detention for a *misdemeanor* regardless if under the jurisdiction of the Department of Corrections or the Department of Health and Social Services. Also makes it a class C felony if the person is on conditions of release before trial and ordered to electronic monitoring or house arrest by the court and the person removes the electronic monitoring device or leaves one's residence without permission.

Section 21 Clean up amendment for change that occurs in section 22, making failure to appear a crime.

Section 22 Removes 30 day grace period for defendants during which it was not a crime to fail to show up for a hearing. Under current law, it is not a crime to fail to appear for a court hearing unless the person goes 30 days or longer without making contact with the court or fails to appear with the intent to avoid prosecution. This section removes both of those limitations.

Section 23 Amends the crime of violating conditions of release which relates to conditions imposed by the court on persons on pretrial release. This section makes it a class A misdemeanor for a person to violate their conditions of release if they are on release for a felony and a class B misdemeanor if they violate while on conditions for a misdemeanor.

Section 24 Makes it a class A misdemeanor to refuse to provide a DNA sample when arrested for a qualifying offense. Under current law, those arrested for a qualifying offense must provide a DNA sample for inclusion in a DNA database. However, there is no enforcement mechanism. This section adds that enforcement mechanism.

Section 25 Clarifies that refusing to provide a DNA sample after conviction, as a part of a person's sentence, or because the person is required to register as a sex offender or child kidnapper is a class C felony.

Section 26 Classification section. Classifies the crime of violating an order to submit to DNA testing upon *arrest* is a class A misdemeanor.

Section 27 Enacts a generalized threat statute to cover when an individual threatens to commit a serious crime, which reasonably places another person in fear. Covers real threats of violence, and not simply false threats.

Section 28 Makes the crime of disorderly conduct a class B misdemeanor punishable by not more than 10 days.

Section 29 Reenacts class A felony level crime for the distribution of schedule IA controlled substances (heroin) and making methamphetamine.

Section 30 Amends AS 11.71.030, misconduct involving a controlled substance in the third degree to include manufacturing or distribution of any amount of a schedule IIA or IIIA controlled substance. Also repeals section of law regarding the delivery of 1g or more of a schedule IA or 2.5 grams or more of a schedule IIA or IIIA controlled substance as the amendments in the bill focus on the type of drug being distributed and not necessarily the amount.

Section 31 Conforming amendment to the changes made in section 30.

Section 32 Makes the possession of any amount of a schedule IA (heroin) or IIA (methamphetamine, cocaine, PCP, etc.) controlled substance and various amounts of IIIA, IVA, and VIA controlled substances a felony.

Section 33 Conforming amendment to the changes made in section 32.

Section 34 Removes possession of most dangerous controlled substances from the crime of misconduct involving a controlled substance in the fifth degree, as those possessory crimes would be a class C felony under the bill.

Section 35 Renames AS 11.71.060 “misconduct involving a controlled substance in the sixth degree” to conform with the changes made to the drug offense statutes.

Section 36 Conforming amendment to statute prohibiting prosecution of individuals who seek medical or law enforcement assistance for a person who is overdosing.

Section 37 Increases the maximum period of probation for felony sex offenses from 15 years to 25. Also increases the maximum period of probation for any other offense to 10 years.

Section 38 - 40 Enhanced sentences for making methamphetamine around children or engaging children in the sale of methamphetamine are reenacted. Also increases the presumptive sentencing ranges for class A, B, and C felonies:

Felony Level	Current Law	SB 32
Class A	First Felony: 3-6 (20 max) Second Felony: 8-12 (20 max) Third Felony: 13-20 (20 max)	First Felony: 5-8 (20 max) Second Felony: 10-14 (20 max) Third Felony: 15-20 (20 max)
Class B	First Felony: 0-2 (10 max) Second Felony: 2-5 (10 max) Third Felony: 4-10 (10 max)	First Felony: 1-3 (10 max) Second Felony: 4-7 (10 max) Third Felony: 6-10 (10 max)
Class C	First Felony: 0-2 (5 max) Second Felony: 1-4 (5 max) Third Felony: 2-5 (5 max)	First Felony: 0-2 (5 max) Second Felony: 2-4 (5 max) Third Felony: 3-5 (5 max)

Section 41 Prohibits the suspension or reduction of the period of mandatory probation outlined in statute for sex offenders.

Section 42 Returns sentencing range for class A misdemeanors to 0-1 year.

Section 43 Returns sentencing range for class B misdemeanors to 0-90 days.

Section 44 Reenacts prohibition on jail time for a first marijuana offense if the person is not on probation or parole at the time of the offense.

Section 45 Repeals requirement that a person serve their sentence for a first DUI on electronic monitoring or house arrest. Returns discretion to the commissioner of corrections to place the person on electronic monitoring at a private residence or at a community residential center.

Section 46 The same changes in section 45 are made in section 46 to the statute governing refusal to submit to a chemical test.

Section 47 Conforming amendment due to the enactment of the class A felony level offense for drug distribution. Adds that conduct to the definition of “illegal activity involving a controlled substance” in the landlord tenant statutes.

Section 48 Conforming amendment. Adds all felony level drug distribution to the list of crimes involving a minor which the Department of Health and Social Services will disclose information to the public.

Section 49 Requires the Alaska Court System to transmit information regarding involuntary commitments that have occurred since October 1, 1981 to the Department of Public Safety.

Section 50 Allows a person’s rap sheet to be used at grand jury to prove the existence of prior convictions when prior convictions are an element of the offense.

Section 51 Repealer section.

Section 52 Applicability section.

Section 53 Retroactivity section. Makes section 49 retroactive.

Section 54 Conditional effect section for court rule change.

Section 55 Immediate effective date for sections 49 and 55.

Section 56 July 1, 2019 effective date for all other sections.

