



# ALASKA STATE LEGISLATURE

## House Judiciary Committee

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### House Bill 49

#### Sectional Analysis — Version M

*Prepared by the House Judiciary Committee*

#### **Section 1**

*AS 11.41.110(a) – Murder in the second degree.*

Conforming amendment. Amends AS 11.41.110(a) to reflect the changes made in Section 26.

#### **Section 2**

*AS 11.41.150(a) – Murder of an unborn child.*

Conforming amendment. Amends AS 11.41.150(a) to reflect the changes made in Section 26.

#### **Section 3**

*AS 11.41.432(a) – Defenses.*

Removes marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is incapacitated or unaware that the sexual act is being committed.

Because of the complex legal and factual issues that may arise, the defense of marriage still applies in situations where a spouse is the caretaker of their partner who is “mentally incompetent” with dementia or Alzheimer’s, or is mentally ill, but still consents to the contact.

A person who is incapacitated or unaware that a sexual act is being committed is legally and factually unable to consent to sexual activity. In most other circumstances, unless specifically excluded by statute or case law, consent remains a defense to sexual assault.

#### **Section 4**

*AS 11.41.452(a) – Online enticement of a minor.*

Removes the word “online” from the crime of “online enticement” criminalizing any enticement of a minor regardless of whether the enticement occurs “online.”

#### **Section 5**

*AS 11.41.452(d) – Online enticement of a minor.*

Removes the word “online” from the crime of “online enticement” and makes solicitation of a minor for sex a class B felony.

## **Section 6**

*AS 11.41.452(e) – Online enticement of a minor.*

Removes the words “online enticement” from the crime of “enticement of a minor.”

## **Section 7**

*AS 11.46.130(a) – Theft in the second degree.*

Conforming amendment. Amends AS 11.46.130(a) to reflect the changes made in Section 14.

Removes inflation adjustment.

## **Sections 8 -13**

*AS 11.46.140(a), -.150(a), -.220(c), -.260(b), -.270(b), -.280(d)*

Removes inflation adjustment from property crime statutes.

## **Section 14**

*AS 11.46.285 – Fraudulent use of an access device or identification document.*

Amends AS 11.46.285, the statute related to fraudulent use of an access device, to include theft of an identification document. This clarification addresses a gap in the statute identified in *Kankanton v. State*, 342 P.3d 840 (Alaska Ct. App. 2015). With the amendment, the offense will include fraudulent use of both an access device and an identification document.

The amendment also restructures the offense levels to a class B felony if the theft using an access device or identification document is \$25,000 or more, a class C felony if the theft is \$75 or more and less than \$25,000, and a class A misdemeanor if the theft is less than \$75. These financial levels for Fraudulent Use of an Access Device or Identification Document are different from the financial levels for Theft in the Second Degree (AS 11.46.130: \$750 to \$25,000), Theft in the Third Degree (AS 11.46.140: \$250 to \$750), and Theft in the Fourth Degree (AS 11.46.150: less than \$250) because the impact on the victim of identity theft is more serious than the effect on a victim of theft. In addition, the requirement of proof of intent to defraud in AS 11.46.285 is a more serious culpability than intent to deprive another of property in AS 11.46.100.

Removes inflation adjustment.

## **Section 15**

*AS 11.46.295 – Prior convictions.*

Amends the application of “prior convictions” to apply to theft in the third degree in determining the existence of prior convictions in the recidivist theft statutes.

## **Section 16**

*AS 11.46.360(a) – Vehicle theft in the first degree.*

Removes inflation adjustment.

## **Section 17**

*AS 11.46.370 – Possession of motor vehicle theft tools.*

Adds a new section establishing the crime of possession of motor vehicle theft tools as a class A misdemeanor. The new crime is similar to AS 11.46.315—Possession of burglary tools, which is also a class A misdemeanor.

In addition to mechanical tools used to unlock a motor vehicle, the amendment includes an “electronic unlocking device” as a motor vehicle theft tool. “Electronic unlocking devices” are devices used to capture the electronic signals from key fobs and other electronic locking systems to unlock a motor vehicle without

permission. The amendment does not include a screwdriver as a motor vehicle theft tool, just as a screwdriver is not a burglary tool in AS 11.46.315.

### **Sections 18-23**

*AS 11.46.482(a), -.484(a), -.486(a), -.530(b), -.620(d), -.730(c)*

Removes inflation adjustment from property crime statutes.

### **Section 24**

*AS 11.46.980 – Determination of value; aggregation of amounts.*

Adds a new subsection (e) that allows prosecutors to aggregate crimes under theft in the second degree if they occur within 180 days, the amount is more than \$750 and less than \$25,000, and the property or services are taken from one or more persons or commercial establishments.

Under current law, the prosecution aggregates the theft amounts when it can prove that the defendant(s) committed the criminal acts “under one course of conduct.” AS 11.47.980(c), *see Buckwalter v. State*, 23 P.3d 81 (Alaska Ct. App. 2001). This amendment to the statutes does not require proof of a single course of conduct and, instead, requires proof that the crimes occurred within 180 days and were from one or more persons or commercial establishments.

### **Section 25**

*AS 11.56.810(a) – Terroristic threatening in the second degree.*

Amends the second degree terroristic threatening statute to cover an individual who knowingly threatens to commit a crime against a person or property and recklessly disregards the risk that the threats will cause the evacuation of a building, will cause serious public inconvenience, or will place the public or a substantial group of the public in fear of serious physical injury. The amended statute covers real threats of violence as well as false threats.

Terroristic threatening in the second degree is directed at threats that, if carried out, are likely to affect a substantial number of people. Threats to schools, trains, buses, airplanes, businesses, and offices are examples reflected in tragic events over the past 25-30 years. The amendment addresses conduct that is usually different from assault in the third degree, AS 11.41.220(a)(1)(A), which addresses a person placing another person “in fear of imminent serious physical injury by means of a dangerous instrument,” and AS 11.41.220(a)(2), which addresses “repeated threats to cause death or serious physical injury to another person.” Both terroristic threatening in the second degree and assault in the third degree are class C felonies.

### **Section 26**

*AS 11.71.025 – Misconduct involving a controlled substance in the second degree.*

Creates an additional tier of drug offense (a class A felony) for possession with intent to manufacture or deliver large quantities of schedule IA controlled substances, which include opiates and heroin, and schedule IIA controlled substances, which include methamphetamines. The higher felony level for this controlled substance offense is directed at dealers and distributors, and not at the possession level. In Alaska, the federal government prosecutes the majority of large quantity drug dealers. The penalties in federal court for similar quantities are greater than the penalties in this amendment. This class A felony offense would give state prosecutors an option for prosecuting large-quantity drug dealers when federal prosecutors may decline the case.

### **Section 27**

*AS 11.71.030(a) – Misconduct involving a controlled substance in the second degree.*

Conforming amendment. Amends AS 11.71.030(a) to reflect the changes made in Section 26.

## **Section 28**

*AS 11.71.030(d) – Misconduct involving a controlled substance in the second degree.*

Conforming amendment. Amends AS 11.71.030(d) to reflect the changes made in Section 26.

## **Section 29**

*AS 11.71.040(a) – Misconduct involving a controlled substance in the third degree.*

Conforming amendment. Amends AS 11.71.040(a) to reflect the changes made in Section 26.

Amends subsection (a) by establishing a basis to prosecute repeat offenders of possession of any amount of schedule IA or IIA controlled substances (opiates, heroin, and methamphetamine) at the class C felony level. Specifically, a person commits a felony if they possess any amount of a schedule IA or IIA drug *and* they have been previously convicted two or more times of drug possession of a schedule IA or IIA controlled substance, either as a felony or as a misdemeanor as described in the statute. Also provides a 10 year “look back” for prior misdemeanor drug possession convictions for drug offenses.

Confirms that certain possession felonies are not affected by this new provision: felony possession of heroin/opiates near a school (AS 11.71.030(a)(3)) and felony possession of date rape drugs (AS 11.71.040(a)(3)).

## **Section 30**

*AS 11.71.040(d) – Misconduct involving a controlled substance in the fourth degree.*

Conforming amendment. Amends AS 11.71.040(d) to reflect the changes made in Section 26.

## **Section 31**

*AS 11.71.050 – Misconduct involving a controlled substance in the fifth degree.*

Two conforming amendments. First, the bill amends AS 11.71.050 to reflect the changes made in Section 26. Second, the bill amends AS 11.71.050(a)(4) by adding the new paragraph of Section 29 above (AS 11.71.040(a)(12)) into the list of exemptions of what constitutes misdemeanor drug possession.

## **Section 32**

*AS 11.71.060 – Misconduct involving a controlled substance in the sixth degree.*

Conforming amendment. Amends AS 11.71.060 to reflect the changes made in Section 26.

## **Section 33**

*AS 11.71.311(a) – Restriction on prosecution for certain persons in connection with a drug overdose.*

Two conforming amendments. First, the bill amends AS 11.71.311(a) to reflect the changes made in Section 26. Second, the bill amends AS 11.71.311(a) by adding the new paragraphs of Section 26 (AS 11.71.025) and Section 34 (AS 11.71.040(a)(12)) into the list of crimes that may not be prosecuted if that person sought in good faith either medical or law enforcement aide for another person they believed to be having a drug overdose.

## **Section 34**

*AS 12.55.015 – Authorized sentences; forfeiture.*

Amends AS 12.55.015 by adding a new subsection specifying that in the cases of domestic violence or sex crimes, there is a presumption by the court of a no contact order.

## **Section 35**

*AS 12.55.027 – Credit for time spent toward service of a sentence of imprisonment.*

Adds a new subsection (a) to read: “A court may only grant credit for time spent toward service of a sentence of imprisonment under this section if the court finds that the sentence, including any credit toward the sentence of imprisonment, meets the requirements of AS 12.55.005.”

The reason to add the new subsection (a) to AS 12.55.027 is to make sure that all parties understand that the court has discretion in determining whether to grant credit for time spent on electronic monitoring or in treatment toward service of a sentence. Specifically, before granting any credit, the court must consider and apply the sentencing criteria set forth in AS 12.55.005 and announced by the Alaska Supreme Court in *State v. Chaney*, 477 P.2d 441 (Alaska 1970) to the question of whether to grant credit for time spent on electronic monitoring or a treatment program.

### **Section 36**

*AS 12.55.125(d) – Sentences of imprisonment for felonies.*

Increases presumptive sentencing range for first-time class B felony offenders from 0 to 2 years to 90 days to 2 years. Adds enhanced felony sentences for making or possessing with intent to manufacture methamphetamine in a home or lodging where children live or engaging children in the manufacture of methamphetamine.

### **Section 37**

*AS 12.55.135(a) – Sentences of imprisonment for misdemeanors.*

Increases the maximum sentence for some class A misdemeanors from 30 to 90 days. The amendment is intended to give judges greater discretion in sentencing individuals convicted of misdemeanor charges.

### **Section 38**

*AS 12.55.135(b) – Sentences of imprisonment for misdemeanors.*

Increases the maximum sentence for some class B misdemeanors from 10 to 30 days. The amendment is intended to give judges greater discretion in sentencing individuals convicted of misdemeanor charges.

### **Section 39**

*AS 12.55.135(n) – Sentences of imprisonment for misdemeanors.*

Conforming amendment. Amends AS 12.55.135(n) to reflect the changes made in Section 26.

### **Section 40**

*AS 12.55.185(16) – Definitions.*

Conforming amendment. Amends AS 12.55.185(16) to add viewing or production of an indecent picture under AS 11.61.123(f)(1) or (2) to the definition of “sexual felony.”

*Inclusion of this section is a drafting error that will be the subject of an amendment.*

### **Section 41**

*AS 12.61.050 – Automated victim notification system.*

Amends AS 12.61.050 by adding a new subsection directing the Department of Corrections to include in the Victim Notification System that victims of domestic violence or sexual offenses shall be informed of their rights to secure a protective order and that certain state victim resources are available to them.

### **Section 42**

*AS 12.63.010(d) – Registration of sex offenders and related requirements.*

Conforming amendment. Amends AS 12.63.010(d) to reflect the changes made in Section 44.

### **Section 43**

*AS 12.63.010 – Registration of sex offenders and related requirements.*

Clarifies that a person may petition the Department of Public Safety for removal from the registry if the petitioner submits proof acceptable to the department that the facts underlying the conviction in another jurisdiction do not constitute a sex offense or child kidnapping in Alaska.

Currently, in at least 13 states, an indecent exposure conviction for public urination can trigger sex offender registration requirements. Of those states, two limit registration to those who committed the act in view of a minor. This amendment is intended to provide an option to petition the department to “opt-out” of registering if the conduct would not be a sex crime in Alaska.

#### **Section 44**

*AS 12.63.020 – Duration of sex offender or child kidnapper duty to register.*

Clarifies that a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction is also required to register as a sex offender in Alaska.

#### **Section 45**

*AS 12.63.100(6) – Definitions.*

Adds a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction to the definition of “sex offender or child kidnapper.”

#### **Section 46**

*AS 18.65.087(d) – Central registry of sex offenders.*

Requires the Department of Public Safety to review procedures and adopt regulations to allow individuals with sex offense convictions in another state to petition for removal from the registry because the facts underlying the out-of-state conviction do not constitute a sex offense in Alaska.

#### **Section 47**

*AS 18.65.087(j) – Central registry of sex offenders.*

Conforming amendment. Amends AS 18.65.087 to reflect the change made in Section 45.

#### **Section 48**

*AS 28.35.030(k) – Operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.*

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 49**

*AS 28.35.032(o) – Refusal to submit to chemical test.*

The same changes in section 48 are made in section 49 to the statute governing refusal to submit to a chemical test.

#### **Section 50**

*AS 33.07.020 – Duties of commissioner; pretrial services.*

Requires the risk assessment tool be verified by peer review.

#### **Section 51**

*AS 33.07.020 – Duties of commissioner; pretrial services.*

Adds a new subsection (b) requiring validation of the risk assessment tool be subject to peer review.

#### **Section 52**

*AS 33.30.011(a) – Duties of commissioner.*

Changes the minimum term of imprisonment for which the Department of Corrections must conduct a risk assessment and prepare a written case plan for sentenced individuals to 90 days.

Requires the Department of Corrections to coordinate with community reentry coalitions or other providers of reentry services when developing a written reentry plan for prisoners.

Creates a new subsection that requires regular reports on offender management plan implementation that includes the number of prisoners provided written case plans, the number of written case plans initiated within the preceding year, and the number of written case plans that were updated in the preceding year.

### **Section 53**

*AS 34.03.360(7) – Definitions.*

Conforming amendment. Amends AS 34.03.360(7) to reflect the changes made in Section 26.

### **Section 54**

*AS 44.19.647(a) – Annual report and recommendations.*

Adds a requirement that the Alaska Judicial Council include the data collected by the Department of Law as described in Section 56 in their annual report.

Additionally, it adds a requirement that the Alaska Judicial Council include “the number of crime victims that participated in the prosecution of and court process relating to the offense in which the person was a victim.” Inclusion of this section appears to be a drafting error that will be the subject of an amendment. It should appear in Section 56, which relates to the Department of Law’s reporting requirements.

### **Section 55**

*AS 44.23.020 – Duties; and powers; waiver of immunity.*

Adds a new subsection (k) that requires the Department of Law to develop a method to track certain information and to report about sex offense complaints and disposition of those cases.

### **Section 56**

*AS 44.23.040 – Records, reports, and recommendations on uniform laws.*

Adds a new subsection (b) that requires the Department of Law to gather and report data to the Alaska Judicial Council on felony sex offenses including the number reported but not referred for prosecution, the number referred for prosecution that were not prosecuted, and the number prosecuted that resulted in a conviction of a crime other than a sex offense.

### **Section 57**

*AS 44.41.065 – Sexual assault examination kits.*

Adds a new section AS 44.41.065 to: (1) require that within 30 days after collection of a sexual assault kit, it is sent to an accredited lab or Department of Public Safety operated laboratory facility; (2) ensure that the sexual assault kit undergoes testing within one year of the laboratory receiving the kit; and (3) within two weeks following completion of testing, reasonable effort will be made to notify the victim that testing occurred. Failure to meet this timeline will not cause a case to be dismissed and if a case is resolved prior to testing, it is no longer required.

### **Section 58**

*AS 44.41.070(a) – Report on untested sexual assault examination kits.*

Requires the Department of Public Safety to include additional data about which kits were ineligible for testing and why.

**Section 59**

*AS 44.41.070(b) – Report on untested sexual assault examination kits.*

Conforming amendment. Amends AS 44.41.070(b) to reflect change made in Section 57.

**Section 60**

*AS 44.41.070(e) – Report on untested sexual assault examination kits.*

Adds a new subsection (e) that includes the definitions of why a sexual assault kit may be ineligible for testing: it is scientifically unviable, is ineligible for CODIS (Combined DNA Index System, a national program that links crimes to DNA), or is an anonymous kit.

**Section 61**

*AS 47.12.315(a) – Public disclosure of information in department records relating to certain minors.*

Conforming amendment. Amends AS 47.12.315(a) to reflect the changes made in Section 26.

**Section 62**

*Court Rule Change.*

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 63**

*Repealer Section.*

**Section 64**

*Applicability Section.*

**Section 65**

*Uncodified Law.*

Conforming amendment. On or before January 10, 2020, the Commissioner of Corrections shall provide a report to the legislature as described under AS 33.30.011(a)(12), enacted by Section 52.

**Section 66**

*Conditional Effect.*

Section 62 of this Act takes effect only if Section 62 of this Act receives the two-third majority vote of each house.

**Section 67**

*Effective Date.*

This Act takes effect July 1, 2019.