

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

May 10, 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 1 year. Misdemeanor sentencing ranges are also increased to up to 1 year for a class A misdemeanor and up to 30 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 criminal history report to be used at grand jury to prove the existence of prior convictions when prior convictions are an element of the offense.

Section 1 Legislative Intent and Findings

- Expresses intent to overturn *Williams v. State*, 418 P.3d 870 (Alaska App. 2018) in regards to counting prior felonies when sentencing a person for a sexual felony and *State, Department of Public Safety v. Doe*, 425 P. 3d 115 (Alaska 2018) in regards to out-of-state sex offenders registering as a sex offender when they are present in Alaska. Also expresses legislative intent for the Department of Public Safety to make additional resources available to expand investigations of online exploitation of children.
- Expresses intent that the court take into consideration good conduct and self-improvement efforts when sentencing a defendant.
- Expresses intent that the Department of Corrections track and measure the effectiveness of evidence-based programs and report to the legislature
- Asks the Department of Public Safety to make additional resources available for investigations of online exploitation of children.

Section 2 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 3 Clean up language. Same change that is made in sec. 2 is made in sec. 3 for murder of an unborn child in the second degree.

Section 4-5 Clarifies the applicable sentencing provisions for sexual abuse of a minor in the third degree (class C felony) when there is at least a six year age difference between the offender and

the victim. The crime will be sentenced as a sexual felony under AS 12.55.125(i) if there is a six year age difference between the offender and victim.

Section 6-8 Removes the word “online” from the crime of “online enticement” criminalizing any enticement of a minor regardless of whether the enticement occurs “online.”

Section 9 Removes inflation adjustment from property crime statutes. Adds “identification document” to the crime of theft in the second degree (class C felony).

Section 10-15 Removes inflation adjustment from property crime statutes.

Section 16 *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 *Kankanton v. State*, 342 P.3d 840 (Alaska App. 2015) which held that an identification document was not an “access device” for the purposes of property offenses.
- The amendment also restructures the offense levels for fraudulent use of an access device or identification document to a
 - a. class B felony if the theft using an access device or identification document is \$25,000 or more;
 - b. class C felony if the theft is \$75 or more and less than \$25,000;
 - and
 - c. class A misdemeanor if the theft is less than \$75.
 - d. The lower felony threshold for this offense reflects fact the magnitude of the potential impact on a victim of identity theft.

Section 17 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 18 Removes inflation adjustment from property crime statutes.

Section 19 *Possession of motor vehicle theft tools.*

Establishes 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.

Section 20-25 Removes inflation adjustment from property crime statutes.

Section 26 *Determination of value; aggregation of amounts.*

- Adds a new subsection (e) that allows the aggregation of theft of the amounts of goods or services taken in individual theft offenses if those offenses occur within 180 days of each other.
 - Under current law, the amounts of goods or services taken in individual theft offenses may be aggregated if those offenses occur “under one course of conduct.” AS 11.47.980(c), *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 27 Adds to the crime of escape in the second degree when 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 28 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 29 Conforming amendment for change that occurs in section 30, making failure to appear a crime.

Section 30 *Failure to Appear* - 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 31 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 32 Separates “production” from “viewing” in the crime of indecent viewing or production of a picture.

Section 33 Conforming amendment. Changes the word “photography” to “production of pictures.”

Section 34 Conforming amendment. Changes the word “photography” to “production of pictures.”

Section 35 Classification section. Makes production of a picture of a minor a class B felony (which will be sentenced as a sexual felony). Viewing of a minor is a class C felony (which will be sentenced as a sexual felony). Production of a picture of an adult is also a class C sexual felony. Viewing of a picture of an adult is a class A misdemeanor.

Section 36 Clarifies that the crime of indecent viewing or production of a picture does not apply to activities that would reasonably be construed as normal caretaker responsibilities or a recognized form of medical treatment.

Section 37 Enacts new crime of “solicitation or production of an indecent picture of a minor.”

- A person commits the crime of solicitation or production of an indecent image of a minor if the person is 18 years of age or older, the victim is 16 years of age or younger and at least four years younger than the offender and the offender solicits or produces an image of the other person’s genitals, anus, or female breast.
- Solicitation of a person under 13 years of age or production of an image of a minor is a class C felony. Solicitation of a person 13 years of age or older is a class A misdemeanor.

Section 38 Reenacts class A felony level crime for the distribution of schedule IA controlled substances (heroin) and making methamphetamine.

Section 39 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 40 Conforming amendment to the changes made in section 39.

Section 41 Makes the possession of any amount of a schedule IA (heroin) or IIA (methamphetamine, cocaine, PCP, etc.), IIIA, IVA, and VA controlled substance a class C felony if the person has been previously convicted twice of a class A misdemeanor drug possession in the preceding 10 years.

Section 42 Conforming amendment to the changes made in section 41.

Section 43 Conforming amendments renames AS 11.71.050 “misconduct involving a controlled substance in the fifth degree” also ensures that possession of marijuana would never be a predicate offense to felony possession in section 41.

Section 44 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 45 Conforming amendment to statute prohibiting prosecution of individuals who seek medical or law enforcement assistance for a person who is overdosing.

Section 46 Increases the amount of time available for an arraignment to happen from 24 hours to 48 hours from the time of arrest. Eliminates language related to proceeding with an arraignment regardless of the availability of a risk assessment conducted by a pretrial services officer.

Section 47 Eliminates language related to a risk assessment conducted by a pretrial services officer.

Section 48 Eliminates language requiring a judicial officer to change any condition of release that has prevented the defendant from being released unless the judicial officer finds by clear and convincing evidence that a less restrictive condition cannot reasonably ensure the defendant’s appearance or the safety of the victim.

Section 49 Eliminates inability to pay as a reason for a judicial officer to conduct subsequent bail hearings and a review of the person’s conditions of release.

Section 50 Largely reenacts the bail statute as it was prior to January 1, 2018. Eliminates the requirement that the release decision be tied to a person’s risk assessment score. Eliminates the presumptions of release and the requirement that a judicial officer find by clear and convincing evidence that no less restrictive condition can ensure the appearance of the defendant or safety of the community or victim before a judicial officer can impose monetary bail. Allows the court to consider the defendant’s risk assessment score when determining bail and conditions.

Section 51 Allows the court to order a third-party custodian even if there is a pretrial services officer available in the area.

Section 52 Prohibits the court from allowing a person who has unconditionally discharged within the previous 5 years from a felony or a crime against a person or a person who may be called as a witness in the case to be a third-party custodian.

Section 53 – 54 Drafting error. Removes “technical violation” language from statute.

Section 55 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 56 Makes the recommendation of a probation officer for early termination of probation permissive and at the discretion of the probation officer. Maintains requirement that the probationer completes a certain amount of probation and is in compliance with their conditions of probation and has completed all of the required treatment programs. Also maintains the prohibition on unclassified felony, sexual felony, and domestic violence offenders from being recommended for early termination.

Section 57 Adjusts ranges for technical violations to 0-3 days for a first technical violation, 0-30 days for a second, and up to the remainder of the person’s suspended time on the third.

Section 58-59 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 and B felonies by approximately one year:

Felony Level	Current Law	HB 49
Class A	First Felony: 3-6 (20 max) Second Felony: 8-12 (20 max) Third Felony: 13-20 (20 max)	First Felony: 4-7 (20 max) Second Felony: 9-13 (20 max) Third Felony: 14-20 (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: 2-6 (10 max) Third Felony: 5-10 (10 max)
Class C	First Felony: 0-2 (5 max) Second Felony: 1-4 (5 max) Third Felony: 2-5 (5 max)	Same as current law.

Section 60 Sexual felony sentencing. Removes the word “online” from the crime of “online enticement of a minor,” adds indecent viewing and production of a picture and sexual abuse of a minor when there is a six year age difference between the victim and the offender to the sexual felony sentencing statutes.

Section 61 Prohibits the suspension or reduction of the period of mandatory probation outlined in statute for sex offenders.

Section 62 Returns sentencing range for class A misdemeanors to 0-1 year.

Section 63: Increases sentencing range for class B misdemeanors to 0-30 days.

Section 64 Clarifies that any prior felony counts for the purposes of determining the presumptive sentencing range for a person being sentenced for a sexual felony.

Section 65 Conforming amendment. Conforms the definition of “most serious felony” to the change in title of “online enticement of a minor” to “enticement of a minor.”

Section 66 Conforming amendment. Conforms the definition of “sexual felony” to reflect the changes made to “enticement of a minor,” “indecent viewing,” and “sexual abuse of a minor in the third degree.”

Section 68 - 70 Requires a person required to register as a sex offender or child kidnapper in another jurisdiction to register in Alaska when that person is present in the state. Also adds indecent viewing or production of a picture of a minor or indecent production of a picture of an adult to the list of registerable sex offenses.

Section 71 Recriminalizes driving with license canceled, suspended, or revoked. This offense will be punishable by a minimum of 10 days with 10 days suspended upon the first offense and a minimum of 10 days upon the second offense.

Section 72 Allows a person to obtain a driver’s license if they have been convicted of felony driving while under the influence and has not also been convicted of a crime against a person, if the license has been revoked for 10 years and in the preceding 10 years the person has not been convicted of a new criminal offense.

Section 73 Allows a person to obtain a driver’s license if they have been convicted of felony refusal to submit to a chemical test and has not also been convicted of a crime against a person, if the license has been revoked for 10 years and in the preceding 10 years the person has not been convicted of a new criminal offense.

Section 74 Reduces amount of time that a probationer may decrease their length of probation for good behavior from ½ to 1/3.

Section 75 Prohibits those convicted of a sex offense, unclassified felony, felony crime against a person, and domestic violence crime against a person from earning credit against their period of probation.

Section 76 Amends duties of a probation officer to require that a probation officer *consider* recommending early termination of probation. Also requires the probation officer to make a recommendation to the court on whether to revoke probation when a petition to revoke probation is filed.

Section 77 Requires a person who has had a disciplinary action while in custody to apply for discretionary parole. If the person has not had any disciplinary actions while in custody they do not have to apply for discretionary parole, they will receive an automatic hearing.

Section 78 Clarifies that a person who is ineligible for a good time deduction from their sentence is also ineligible for discretionary parole. Also, prohibits certain crimes from being considered for discretionary parole. These are the same crimes that were ineligible for discretionary parole prior to January 1, 2017:

- Non-sex class A felonies (Robbery 1, Assault 1, Arson 1);
- B felonies if the person had one or more prior felony convictions;
- C felonies if the person had two or more prior felony convictions; and
- B and C sex felonies (Sexual Assault 2, Sexual Abuse of a Minor 2, Distribution of Child Pornography).

Additionally this section contains a conflicting provision which prohibits a person from being eligible for discretionary parole if they have been convicted of a

- Sexual felony;
- Class A felony if they have one prior felony;
- Class B felony if they have two prior felonies;
- Class C felony if they have three or more prior felonies.

Section 79 Requires persons convicted of B felony level drug distribution to serve one-third of the active term of imprisonment before they can be considered for discretionary parole.

Section 80 Eliminates a presumption of release and thereby returns discretion back to the parole board when determining release on discretionary parole.

Section 81 Allows the parole board to make a person, who does not meet the factors in section 10, ineligible for further consideration of discretionary parole or to have the person serve additional time before they can be considered again for discretionary parole.

Section 82 Conforming language regarding the requirement that a person fill out an application for discretionary parole.

Section 83 Outlines application process for discretionary parole. Ensures that the prisoner is furnished with a copy of the preparole report.

Section 84 Gives a parole officer the discretion to make a recommendation to the parole board that a person's parole be terminated. Maintains requirement that the parolee is in compliance with their conditions of parole and has completed all of the required treatment programs. Also maintains the prohibition on unclassified felony, sexual felony, and domestic violence offenders from being recommended for early termination.

Section 85 Adjusts the sentencing ranges for technical violations of parole to 0-3 days for a first technical violation, 0-30 days for a second technical violation, and up to the remainder of the suspended time on the third violation.

Section 86 Removes language regarding technical violations from law.

Section 87 Allows the parole board to toll time while the parolee is in violation status. This is similar to how probation works when a probationer is in violation status. Under this provision, the parolee's parole time will not continue to run while the parole violation is under consideration by the parole board.

Section 88 Reduces amount of time that a parolee may decrease their length of parole for good behavior from 1/2 to 1/3.

Section 89 Prohibits those convicted of a sex offense, unclassified felony, felony crime against a person, and domestic violence crime against a person from earning credit against their period of parole.

Section 90 Requires the Department of Corrections to conduct a risk-needs assessment and develop a case plan for offenders sentenced to 90 days or more. Also requires the department to provide a report to the legislature on the risk-needs assessments conducted.

Section 91 Conforming amendment. Conforms the definition of "illegal activity" in the Landlord Tenant Act to the changes made to the drug statutes.

Section 92 Adds a new section AS 44.41.065 requiring a law enforcement agency to ensure that all sexual assault examination kits collected by that agency are sent to a lab within 30 days of collection, tested within 1 year, and advise victim within 2 weeks that testing is complete.

Section 93 Requires each law enforcement agency in the state to report on the number of sexual assault examination kits determined ineligible for testing.

Section 94 Requires the Department of Public Safety to report the information in section 93 to the legislature.

Section 95 Establishes that a sexual assault examination kit is ineligible for testing if the kit is scientifically unviable, does not meet eligibility requirements for inclusion in CODIS, or was collected from a person who wishes to remain anonymous.

Section 96 Allows a person's criminal history report to be used at grand jury to prove the existence of prior convictions when prior convictions are an element of the offense.

Section 97-98 Requires the use of contemporaneous two-way video conferencing at all arraignments, pleas, and non-evidentiary bail hearings in misdemeanor cases and initial appearances and non-evidentiary bail reviews and arraignments in felony cases. Also allows the court to order the defendant to appear by contemporaneous two-way video conferencing at any other hearing.

Section 99 Repealer section.

Section 100 Uncodified law section. Requires the commissioner of corrections to provide the report established in sec 90 by Jan 10, 2020.

Section 101 Uncodified law section. Requires the Department of Corrections to report to the legislature on pro-social programs.

Section 102 Uncodified law section. 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 103 Applicability section.

Section 104 Conditional effect section for court rule change.

Section 105 Immediate effective date for section 102.

Section 106 January 1, 2020 effective date for section 92-95.

Section 107 July 1, 2019 effective date for all other sections.

