

Conference Committee CS – Amendments from Senate Bill

- 1.) The Pretrial Services Program under AS 03.07 will remain in statute as is – this was in the House version of the bill. Therefore, all references to the Pretrial Services Program will need to be edited, requiring limited powers of free conference on these sections: 61, 62, 67, 104, 105, 106, 107, 128, 149, 150.
- 2.) Section 39, related to the terroristic threatening, will be replaced with house version section 31. This change will further be amended per Legislative Legal's request to clarify intent, which will require limited powers of free conference.
- 3.) Section 40, relating to disorderly conduct, will be amended to include a sentence of up to 72 hours for the first offense. The sentence for subsequent convictions will remain as in the senate version: up to 10 days. This change will require limited powers of free conference.
- 4.) Section 51 will be amended to add a 10-year look back period for drug offenses, similar to language in the house version. This change will require limited powers of free conference.
- 5.) Section 55 will be amended to add references as necessary to conform to changes in this bill. This change will require limited powers of free conference.
- 6.) Section 61 regarding bail conditions will be replaced by house version section 50 with clarifying amendments. This change will require limited powers of free conference.
- 7.) Section 68 enacting a cap for credit against time spent in treatment will be amended from 180 to 365 days. This change will require limited powers of free conference.
- 8.) Sections 72 - 74 will be amended to adopt the following felony presumptive sentencing structure. These changes will require limited powers of free conference.
 - Class A felony (1st conviction): 4-7 years
 - Class A felony (2nd conviction): 10-14 years
 - Class A felony (3rd conviction): 15-20 years
 - Class B felony (1st conviction): 1-3 years
 - Class B felony (2nd conviction): 3-7 years
 - Class B felony (3rd conviction): 6-10 years
 - Class C felony (1st conviction): 0-2 years
 - Class C felony (2nd conviction): 2-4 years
 - Class C felony (3rd conviction): 3-5 years

- 9.) Sections 94 & 95: Driving while license suspended provisions will be amended to provide that first-time incidents involving an administrative suspension will be a violation. The sentence for subsequent administrative suspension and all court revocations will remain as in the senate version: class A misdemeanor. This change will require limited powers of free conference.
- 10.) Section 101 regarding use of headlights will be amended to correct a drafting error. The immediate effective date for this section will also be removed from section 157. These changes will require limited powers of free conference.
- 11.) Sections 108, 109, 112, 124, and 125 relating to eligibility for discretionary parole and good time credit will be amended to remove a reference to AS 11.41.120 (manslaughter). These changes will require limited powers of free conference.
- 12.) Section 110 regarding applications for discretionary parole will be replaced with house version section 77.
- 13.) Section 144 regarding Criminal Rules 45 and a defendant's right to waive their speedy trial rights, will be removed from the bill. Since this section did not appear in the house bill, this change will NOT need limited powers of free conference.
- 14.) Sections related to repeals (145 and House version section 99); applicability (149); transition language (150); and effective dates (153-158) may be edited as needed to conform to the changes above.

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1 (A) DOES NOT MAKE CONTACT WITH THE COURT OR
2 A JUDICIAL OFFICER WITHIN 30 DAYS AFTER THE PERSON DOES
3 NOT APPEAR AT THE TIME AND PLACE OF A SCHEDULED
4 HEARING; OR

5 (B) DOES NOT APPEAR AT THE TIME AND PLACE OF A
6 SCHEDULED HEARING TO AVOID PROSECUTION];

7 (2) class A misdemeanor if the person was released in connection with

8 a

9 (A) charge of a misdemeanor, while awaiting sentence or
10 appeal after conviction of a misdemeanor; or

11 (B) [, OR IN CONNECTION WITH A] requirement to appear
12 as a material witness in a criminal proceeding [, AND THE PERSON

13 (A) DOES NOT MAKE CONTACT WITH THE COURT OR
14 A JUDICIAL OFFICER WITHIN 30 DAYS AFTER THE PERSON DOES
15 NOT APPEAR AT THE TIME AND PLACE OF A SCHEDULED
16 HEARING; OR

17 (B) DOES NOT APPEAR AT THE TIME AND PLACE OF A
18 SCHEDULED HEARING TO AVOID PROSECUTION; OR

19 (3) VIOLATION PUNISHABLE BY A FINE OF UP TO \$1,000

House
Version

* Sec. 31. AS 11.56.810(a) is amended to read:

20 (a) A person commits the crime of terroristic threatening in the second degree
21 if the person makes a threat that

22 (1) places [KNOWINGLY MAKES A FALSE REPORT THAT A
23 CIRCUMSTANCE (1) DANGEROUS TO HUMAN LIFE EXISTS OR IS ABOUT
24 TO EXIST AND (A)] a person [IS PLACED] in reasonable fear of serious physical
25 injury to any person with reckless disregard that the threat may cause

26 (A) the [; (B) CAUSES] evacuation of or initiation of an
27 emergency protocol for a building, public place or area, business premises, or
28 mode of public transportation;

29 (B) [(C) CAUSES] serious public inconvenience; or

30 (C) the public or a substantial group of the public to be in
31

Note:
will be
reworded
for
clarity

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1 fear of serious physical injury [(D) THE REPORT CLAIMS THAT A
2 BACTERIOLOGICAL, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL
3 SUBSTANCE THAT IS CAPABLE OF CAUSING SERIOUS PHYSICAL
4 INJURY HAS BEEN SENT OR IS PRESENT IN A BUILDING, PUBLIC
5 PLACE OR AREA, BUSINESS PREMISES, OR MODE OF PUBLIC
6 TRANSPORTATION]; or

7 (2) causes any person to reasonably believe that a circumstance
8 exists or is about to exist that is dangerous to the proper or safe functioning of an oil or
9 gas pipeline or supporting facility, utility, or transportation or cargo facility; in this
10 paragraph, "oil or gas pipeline or supporting facility" and "utility" have the meanings
11 given in AS 11.46.495.

~~12 * Sec. 32. AS 11.61.123(c) is amended to read:~~

~~13 (a) A person commits the crime of indecent viewing or production of a
14 picture [PHOTOGRAPHY] if [, IN THE STATE,] the person knowingly~~

~~15 (1) views, or views [PRODUCES] a picture of, the private exposure of
16 the genitals, anus, or female breast of another person; or~~

~~17 (2) produces a picture of the private exposure of the genitals, anus,
18 or female breast of another person [AND THE VIEW OR PRODUCTION IS
19 WITHOUT THE KNOWLEDGE OR CONSENT OF~~

~~20 (1) THE PARENT OR GUARDIAN OF THE PERSON VIEWED,
21 OR WHO IS SHOWN IN THE PICTURE, IF THE PERSON WHO IS VIEWED OR
22 SHOWN IS UNDER 16 YEARS OF AGE; AND~~

~~23 (2) THE PERSON VIEWED OR SHOWN IN THE PICTURE, IF
24 THE PERSON VIEWED OR SHOWN IS AT LEAST 13 YEARS OF AGE].~~

~~25 * Sec. 33. AS 11.61.123(c) is amended to read:~~

~~26 (c) This section does not apply to the viewing or production of a picture
27 [PHOTOGRAPHY] conducted by a law enforcement agency for a law enforcement
28 purpose.~~

~~29 * Sec. 34. AS 11.61.123(d) is amended to read:~~

~~30 (d) In a prosecution under this section, it is an affirmative defense that the
31 viewing or production of a picture [PHOTOGRAPHY] was conducted as a security~~

#5 p1

1 this subsection; the defendant shall notify the surety; and
2 (3) at least seven days have elapsed between the previous review and
3 the time set for the requested review [; HOWEVER, A PERSON MAY RECEIVE
4 ~~ONLY ONE BAIL REVIEW HEARING SOLELY FOR INABILITY TO PAY~~].

House
version

* Sec. 50. AS 12.30.011 is repealed and reenacted to read:

Replaces
Section
61

5 **Sec. 12.30.011. Release before trial.** (a) Except as otherwise provided in this
6 chapter, a judicial officer shall order a person charged with an offense to be released
7 on the person's personal recognizance or upon execution of an unsecured appearance
8 bond, on the condition that the person
9

- 10 (1) obey all court orders and all federal, state, and local laws;
- 11 (2) appear in court when ordered;
- 12 (3) if represented, maintain contact with the person's lawyer; and
- 13 (4) notify the person's lawyer, who shall notify the prosecuting
14 authority and the court, not more than 24 hours after the person changes residence.

15 (b) If a judicial officer determines that the release under (a) of this section will
16 not reasonably ensure the appearance of the person or will pose a danger to the victim,
17 other persons, or the community, the officer shall impose the least restrictive condition
18 or conditions that will reasonably ensure the person's appearance and protect the
19 victim, other persons, and the community. In addition to conditions under (a) of this
20 section, the judicial officer may, singly or in combination,

- 21 (1) require the execution of an appearance bond in a specified amount
22 of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent
23 of the amount of the bond;
- 24 (2) require the execution of a bail bond with sufficient solvent sureties
25 or the deposit of cash;
- 26 (3) require the execution of a performance bond in a specified amount
27 of cash to be deposited in the registry of the court;
- 28 (4) place restrictions on the person's travel, association, or residence;
- 29 (5) order the person to refrain from possessing a deadly weapon on the
30 person or in the person's vehicle or residence;
- 31 (6) require the person to maintain employment or, if unemployed,

#5 p2

- 1 actively seek employment;
- 2 (7) require the person to notify the person's lawyer and the prosecuting
3 authority within two business days after any change in employment;
- 4 (8) require the person to avoid all contact with a victim, a potential
5 witness, or a codefendant;
- 6 (9) require the person to refrain from the consumption and possession
7 of alcoholic beverages;
- 8 (10) require the person to refrain from the use of a controlled substance
9 as defined by AS 11.71, unless prescribed by a licensed health care provider with
10 prescriptive authority;
- 11 (11) require the person to be physically inside the person's residence,
12 or in the residence of the person's third-party custodian, at time periods set by the
13 court;
- 14 (12) require the person to keep regular contact with a law enforcement
15 officer or agency;
- 16 (13) order the person to refrain from entering or remaining in premises
17 licensed under AS 04;
- 18 (14) place the person in the custody of an individual who agrees to
19 serve as a third-party custodian of the person as provided in AS 12.30.021;
- 20 (15) if the person is under the treatment of a licensed health care
21 provider, order the person to follow the provider's treatment recommendations;
- 22 (16) order the person to take medication that has been prescribed for
23 the person by a licensed health care provider with prescriptive authority;
- 24 (17) order the person to submit to electronic monitoring;
- 25 (18) order the person to submit to a pretrial risk assessment by the
26 Department of Corrections under AS 33.07;
- 27 (19) order the person to submit to supervision by a pretrial services
28 officer under AS 33.07, which may include the use of electronic monitoring ~~if~~ ⁺
29 ~~determined necessary by the commissioner of corrections;~~
- 30 (20) order the person to comply with any other condition that is
31 reasonably necessary to ensure the appearance of the person and to ensure the safety

1 of the victim, other persons, and the community; and

2 (21) require the person to comply with a program established under
3 AS 47.38.020 if the person has been charged with an alcohol-related or substance-
4 abuse-related offense that is an unclassified felony, a class A felony, a sexual felony,
5 or a crime involving domestic violence.

6 (c) In determining the conditions of release under this chapter, the court shall
7 consider the following:

- 8 (1) the nature and circumstances of the offense charged;
- 9 (2) the weight of the evidence against the person;
- 10 (3) the nature and extent of the person's family ties and relationships;
- 11 (4) the person's employment status and history;
- 12 (5) the length and character of the person's past and present residence;
- 13 (6) the person's record of convictions and any pending criminal
14 charges;
- 15 (7) the person's record of appearance at court proceedings;
- 16 (8) assets available to the person to meet monetary conditions of
17 release;
- 18 (9) the person's reputation, character, and mental condition;
- 19 (10) the effect of the offense on the victim, any threats made to the
20 victim, and the danger that the person poses to the victim;
- 21 (11) any other facts that are relevant to the person's appearance or the
22 person's danger to the victim, other persons, or the community; and

23 (12) the pretrial risk assessment provided by a pretrial services officer,
24 (d) In making a finding regarding the release of a person under this chapter,

*
if available

25 (1) except as otherwise provided in this chapter, the burden of proof is
26 on the prosecuting authority that a person charged with an offense should be detained
27 or released with conditions described in (b) of this section or AS 12.30.016;

28 (2) there is a rebuttable presumption that there is a substantial risk that
29 the person will not appear and the person poses a danger to the victim, other persons,
30 or the community, if the person is

31 (A) charged with an unclassified felony, a class A felony, a

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1 sexual felony, or a felony under AS 28.35.030 or 28.35.032;

2 (B) charged with a felony crime against a person under
3 AS 11.41, was previously convicted of a felony crime against a person under
4 AS 11.41 in this state or a similar offense in another jurisdiction, and less than
5 five years have elapsed between the date of the person's unconditional
6 discharge on the immediately preceding offense and the commission of the
7 present offense;

8 (C) charged with a felony offense committed while the person
9 was on release under this chapter for a charge or conviction of another offense;

10 (D) charged with a crime involving domestic violence, and has
11 been convicted in the previous five years of a crime involving domestic
12 violence in this state or a similar offense in another jurisdiction;

13 (E) arrested in connection with an accusation that the person
14 committed a felony outside the state or is a fugitive from justice from another
15 jurisdiction, and the court is considering release under AS 12.70.

16 (e) If the supreme court establishes a schedule of bail amounts or conditions of
17 release for misdemeanor offenses, the schedule must include a condition providing
18 that a correctional facility shall, at the time of release, conduct a chemical test of the
19 breath of a person who has been arrested and who is intoxicated and shall detain the
20 person until the test result indicates that the person's breath has less than 0.08 grams of
21 alcohol for each 210 liters of breath or, with the consent of the person, release the
22 person to another person who is willing and able to provide care for the person.

23 ~~AS 12.30.011(2) is amended to read:~~

24 (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016,
25 a judicial officer may appoint a third-party custodian if the officer finds [, ON THE
26 RECORD,] that the appointment will, singly or in combination with other
27 conditions,

28 [(1) PRETRIAL SUPERVISION UNDER AS 33.07 IS NOT
29 AVAILABLE IN THE PERSON'S LOCATION;

30 (2) NO SECURED APPEARANCE OR PERFORMANCE BONDS
31 HAVE BEEN ORDERED; AND

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1 (10) permit each probationer to travel in the state to make diligent
2 efforts to secure and maintain steady employment or to participate in educational
3 courses or training programs if the travel is not inconsistent with other terms and
4 conditions of probation;

5 (11) report on the probationer by making a recommendation to
6 the court to revoke probation or to maintain existing probation conditions when

7 probation or parole is filed.

House 8 ✓. * Sec. 77. AS 33.16.060(a) is amended to read:

9 (a) The board shall

10 (1) serve as the parole authority for the state;

11 (2) consider the suitability for parole of a prisoner who is eligible for
12 discretionary parole or [AT LEAST 90 DAYS BEFORE THE PRISONER'S FIRST
13 DATE OF ELIGIBILITY AND UPON RECEIPT OF THE PRISONER'S
14 APPLICATION FOR] special medical parole if

15 (A) the prisoner had no disciplinary action imposed during
16 incarceration; or

17 (B) the prisoner had disciplinary action imposed during
18 incarceration and the prisoner filed an application with the board for
19 discretionary or special medical parole;

20 (3) impose parole conditions on all prisoners released under special
21 medical, discretionary, or mandatory parole;

22 (4) under AS 33.16.210, discharge a person from parole when custody
23 is no longer required;

24 (5) maintain records of the meetings and proceedings of the board;

25 (6) recommend to the governor and the legislature changes in the law
26 administered by the board;

27 (7) recommend to the governor or the commissioner changes in the
28 practices of the department and of other departments of the executive branch
29 necessary to facilitate the purposes and practices of parole;

30 (8) upon request of the governor, review and recommend applicants
31 for executive clemency; and

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(9) execute other responsibilities prescribed by law.

~~to read:~~

(a) A prisoner sentenced to an active term of imprisonment of at least 181 days may, in the discretion of the board, be released on discretionary parole if the prisoner

(1) has served the amount of time specified under (b) of this section, except that

(A) a prisoner sentenced to one or more mandatory 99-year terms under AS 12.55.125(a) or one or more definite terms under AS 12.55.125(f) is not eligible for consideration for discretionary parole;

(B) a prisoner is not eligible for consideration of discretionary parole if the prisoner is

(i) made ineligible by order of a court under AS 12.55.115;

(ii) serving a sentence for a sexual felony as defined in AS 12.55.185;

(iii) serving a sentence for a class A felony conviction and has previously been convicted of a felony offense;

(iv) serving a sentence for a class B felony conviction and has two or more prior felony convictions; or

(v) serving a sentence for a class C felony conviction and has three or more prior felony convictions;

(C) a prisoner imprisoned under AS 12.55.086 is not eligible for discretionary parole unless the actual term of imprisonment is more than one year;

(D) a prisoner sentenced to a single sentence within or below a presumptive range set out in AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i) who has not been allowed by the three-judge panel under AS 12.55.175 to be considered for discretionary parole release is not eligible for consideration of discretionary parole;

(E) a prisoner sentenced to a single sentence, including a