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Martin
4/11/18

CS FOR HOUSE BILL NO. 387(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE CLAMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to scheduled substances; relating to the Controlled Substances
2 Advisory Committee; authorizing the attorney general to schedule substances by
3 emergency regulation or repeal an emergency regulation that scheduled a substance;
4 relating to detaining a person for up to 48 hours for the prosecuting authority to
5 demonstrate that release of the person would not reasonably ensure the appearance of
6 the person or will pose a danger to the victim, other persons, or the community if the
7 person has a criminal conviction or charge outside the state; relating to conditions of
8 release for a person who is represented by an attorney or has a criminal conviction or
9 charge outside the state; relating to factors the court is required to consider when
10 determining the conditions of release before trial; amending the authority of pretrial
11 services officers to make a warrantless arrest or request the court to issue a warrant for
12 arrest; providing that pretrial services, probation, and parole officers may perform

1 **duties relating to pretrial services, probation, and parole; amending Rule 41, Alaska**
2 **Rules of Criminal Procedure; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE INTENT. It is the intent of the legislature that, if a person's criminal
7 convictions or charges outside the state are included in a pretrial risk assessment conducted
8 under AS 33.07, the result of that assessment will control the release decision and the section
9 of this bill allowing a defendant to be detained for 48 hours and directing presumptive release
10 on a person's own recognizance or on an unsecured bond when the person has a criminal
11 conviction or charge outside the state will no longer apply.

12 * **Sec. 2.** AS 11.71.100(c) is amended to read:

13 (c) The **president of the Board of Pharmacy or the president's designee**
14 [ATTORNEY GENERAL] is the **chair** [CHAIRMAN] of the committee.

15 * **Sec. 3.** AS 11.71.100(d) is amended to read:

16 (d) The committee meets at the call of the **chair of the committee**
17 [ATTORNEY GENERAL].

18 * **Sec. 4.** AS 11.71.110 is amended to read:

19 **Sec. 11.71.110. Duties of committee.** The committee shall

20 (1) advise the governor of the need to add, delete, or reschedule
21 substances in the schedules in AS 11.71.140 - 11.71.190;

22 (2) recommend regulations for adoption by the Board of Pharmacy to
23 prevent excessive prescription of controlled substances and the diversion of
24 prescription drugs into illicit channels;

25 (3) evaluate the effectiveness of programs in the state providing
26 treatment and counseling for persons who abuse controlled substances;

27 (4) recommend programs to the Alaska Court System to be instituted
28 as alternatives to the prosecution or imprisonment of offenders who have no prior
29 criminal record involving controlled substance offenses and who are charged with
30 crimes involving controlled substances;

(5) review and evaluate enforcement policies and practices of the Department of Public Safety and the Department of Law with regard to crimes involving controlled substances, and recommend modifications of those policies and practices consistent with the committee's assessment of the probable danger of particular controlled substances; [AND]

(6) review budget requests and recommend amounts for appropriations to the governor and the legislature for departments and agencies responsible for

(A) enforcing criminal laws pertaining to controlled substances;

(B) providing treatment and counseling of persons who abuse controlled substances; and

(C) regulating the legitimate handling of controlled substances;

and

(7) advise the attorney general of the need to schedule substances by emergency regulation.

* **Sec. 5.** AS 11.71 is amended by adding a new section to read:

Sec. 11.71.125. Emergency substance scheduling. (a) The attorney general may, by regulation, schedule a substance under this chapter regardless of whether the substance is substantially similar to a controlled substance listed in AS 11.71.140 - 11.71.180, if the attorney general finds that scheduling the substance on an emergency basis is necessary to avoid an immediate hazard to public safety.

(b) In determining whether to schedule a substance on an emergency basis, or repeal an emergency regulation that scheduled a substance, the attorney general shall

(1) assess the degree of danger or probable danger of the substance by considering

(A) the actual or probable abuse of the substance including the

(i) history and current pattern of abuse;

(ii) scope, duration, and significance of abuse of the substance; and

(iii) degree of actual or possible detriment that may result from abuse of the substance; and

(B) the risk to public health;

(2) consider whether the substance has been scheduled on a temporary basis under federal law and may consider clandestine importation, manufacture, or distribution of the substance;

(3) consult with the Controlled Substances Advisory Committee established under AS 11.71.100; and

(4) consult with the chief medical officer in the Department of Health and Social Services.

(c) The attorney general may schedule a substance by emergency regulation under this section only if the substance is currently listed on a federal controlled substance schedule.

(d) The attorney general shall clearly indicate in an emergency regulation that schedules a substance the appropriate schedule under this chapter that applies to the substance.

(e) The attorney general shall post a notice on the Alaska Online Public Notice System (AS 44.62.175) 30 days before the effective date of an emergency regulation that schedules a substance. The notice must include

(1) a summary of the attorney general's findings under (b) of this section; and

(2) the finding required for an emergency regulation under AS 44.62.250(b).

(f) The attorney general may not adopt an emergency regulation under this section that schedules an alcoholic beverage as defined in AS 04.21.080, marijuana as defined in AS 17.38.900, or tobacco.

(g) An emergency regulation adopted under this section is subject to the requirements in AS 44.62.260(c).

* **Sec. 6.** AS 11.71.900(4) is amended to read:

(4) "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190 **or included in those schedules by an emergency regulation adopted under AS 11.71.125;**

* **Sec. 7.** AS 11.71.900 is amended by adding a new paragraph to read:

(31) "substance" means a drug, controlled substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190 or in an emergency regulation adopted under AS 11.71.125, AS 44.62.250, and 44.62.260.

* **Sec. 8.** AS 12.30.006(b) is amended to read:

(b) At the first appearance before a judicial officer, a person may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011 would not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community, if the person has [BEEN CHARGED WITH THE FOLLOWING CRIMES:]

(1) **been charged with**

(A) an unclassified, class A, or class B felony;

(B) [(2)] a class C felony

(i) [(A)] under AS 11.41, AS 11.56.730, AS 28.35.030, or 28.35.032;

(ii) [(B)] that is a sex offense; [IN THIS SUBPARAGRAPH, "SEX OFFENSE" HAS THE MEANING GIVEN IN AS 12.63.100]; or

(iii) [(C)] that is a crime involving domestic violence; in this **sub-subparagraph** [SUBPARAGRAPH], "crime involving domestic violence" has the meaning given in AS 18.66.990; or

(C) [(3)] a class C felony, other than a class C felony listed in **(B)** [(2)] of this **paragraph** [SUBSECTION], and the person has been assessed as moderate to high risk under AS 12.30.011(c)(2); **or**

(2) a criminal conviction or charge outside the state that

(A) is a felony, a crime against a person, or a sex crime; and

(B) has not been used in determining the person's risk level

in the pretrial risk assessment under AS 33.07.

* **Sec. 9.** AS 12.30.011(a) is amended to read:

(a) **Except as otherwise provided in this chapter, a** [A] judicial officer may order that a person charged with an offense, in addition to other conditions imposed under this section, be released

- (1) on the person's own recognizance;
- (2) upon execution of an unsecured appearance bond; or
- (3) upon execution of an unsecured performance bond.

* **Sec. 10.** AS 12.30.011(b) is amended to read:

(b) A person charged with a misdemeanor that does not include an offense under AS 11.41, AS 11.56.730, 11.56.757, AS 28.35.030, or 28.35.032, a sex offense as defined in AS 12.63.100, or a crime involving domestic violence as defined in AS 18.66.990 and who is assessed by a pretrial services officer as

(1) low to moderate risk shall, except as provided in (m) of this section, be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond; or

(2) high risk shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release in combination with the release of the person on the person's own recognizance or upon execution of an unsecured bond can reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community.

* **Sec. 11.** AS 12.30.011(c) is amended to read:

(c) A person charged with a class C felony that does not include an offense under AS 11.41, AS 11.56.730, AS 28.35.030, or 28.35.032, a sex offense as defined in AS 12.63.100, or a crime involving domestic violence as defined in AS 18.66.990 and who is assessed by a pretrial services officer as

(1) low risk shall, except as provided in (m) of this section, be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond; or

(2) moderate to high risk shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release in combination with the release of the person on the person's own recognizance or upon execution of an

unsecured bond can reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community.

* **Sec. 12.** AS 12.30.011(g) is amended to read:

(g) A person released under this **chapter** [SECTION] shall be released on the condition that the person

(1) obey all court orders;

(2) obey all laws;

(3) make all court appearances;

(4) maintain contact with the person's pretrial services officer, if one is appointed by the court, and follow the pretrial services officer's instructions;

(5) maintain contact with the person's attorney **if the person is represented by an attorney;**

(6) notify the person's attorney or, if the person is not represented by an attorney, the pretrial services officer or the court within 24 hours after a change in the person's residence.

* **Sec. 13.** AS 12.30.011(i) is amended to read:

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

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions, **including convictions outside the state;**

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) the conditions of release recommended by the pretrial services officer;

(12) the person's pretrial risk assessment score; and

(13) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

* **Sec. 14.** AS 12.30.011 is amended by adding a new subsection to read:

(m) A person charged with an offense who would otherwise be released under AS 12.30.011(b)(1) or (c)(1) and who has a criminal conviction or charge outside the state that is a felony, a crime against a person, or a sex crime and that has not been used in determining the person's risk level in the pretrial risk assessment under AS 33.07 shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release, in combination with the release of the person on the person's own recognizance or upon execution of an unsecured bond, can reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community.

* **Sec. 15.** AS 33.07.030(g) is amended by to read:

(g) A pretrial services officer may

(1) recommend pretrial diversion to the court and parties before adjudication in accordance with the guidelines established by the commissioner under AS 33.07.020(6);

(2) [ARREST, WITHOUT A WARRANT, A DEFENDANT WHO HAS BEEN RELEASED WHILE AWAITING TRIAL] if the officer has probable cause to believe the defendant has committed an offense under AS 11.56.730 or 11.56.757 or has violated the defendant's release conditions, **file a complaint with the court and**

(A) arrest, with or without a warrant, a defendant who has been released while awaiting trial; or

(B) request the court to issue warrants related to any violation of the defendant's release conditions;

(3) refer interested defendants for substance abuse screening, assessment, and treatment on a voluntary basis and assist any defendant whose offense or criminal history identified a dependency on, abuse of, or addiction to alcohol or controlled substances with accessing and obtaining appropriate treatment in the community to address those needs;

(4) recommend that a defendant charged with an offense involving the use of alcohol or controlled substances comply with a program established under AS 47.38.020; and

(5) coordinate with community-based organizations and tribal courts and councils to develop and expand pretrial diversion options.

* **Sec. 16.** AS 33.16.190 is amended to read:

Sec. 33.16.190. Authority of parole, pretrial services, and probation officers. An officer appointed by the commissioner under AS 33.05.020(a), AS 33.07, or under this chapter, may discharge duties under AS 33.05, AS 33.07, or this chapter.

* **Sec. 17.** AS 44.23.020 is amended by adding a new subsection to read:

(j) The attorney general may by regulation schedule a substance on an emergency basis as provided in AS 11.71.125 and AS 44.62 (Administrative Procedure Act).

* **Sec. 18.** AS 44.62.175(a) is amended to read:

(a) The lieutenant governor shall develop and supervise the Alaska Online Public Notice System, to be maintained on the state's site on the Internet. The lieutenant governor shall prescribe the form of notices posted on the system by state agencies. The Alaska Online Public Notice System must include

- (1) notices of proposed actions given under AS 44.62.190(a);
- (2) notices of state agency meetings required under AS 44.62.310(e), even if the meeting has been held;
- (3) notices of solicitations to bid issued under AS 36.30.130;
- (4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and AS 43.40.010;
- (5) executive orders and administrative orders issued by the governor;

(6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;

(7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 11.71.125 or AS 44.62.190(a), including an emergency regulation or repeal regardless of whether it has taken effect;

(8) notices required by AS 44.62.245(b) regarding an amended version of a document or other material incorporated by reference in a regulation;

(9) a summary of the text of recently issued published opinions of the attorney general;

(10) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;

(11) in accordance with AS 39.52.240(h), advisory opinions of the attorney general; [AND]

(12) notices required by AS 26.30.010(d) and (e) regarding applications for military facility zones; and

(13) notices of substances scheduled by an emergency regulation under AS 11.71.125.

* **Sec. 19.** AS 44.62.200(a) is amended to read:

(a) The notice of proposed adoption, amendment, or repeal of a regulation must include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law that are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;

(5) a summary of the fiscal information required to be prepared under AS 44.62.195; and

(6) for a regulation under AS 11.71.125, a summary of the attorney

general's compliance with the requirements of AS 11.71.125(b).

* **Sec. 20.** AS 44.62.250 is amended to read:

Sec. 44.62.250. Emergency regulations. **Except for a regulation adopted under AS 11.71.125, a** [A] regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation, the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and, within five days after filing by the lieutenant governor, the agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to give the required notice by the end of the 10th day automatically repeals the regulation.

* **Sec. 21.** AS 44.62.250 is amended by adding a new subsection to read:

(b) A regulation or order of repeal may be adopted as an emergency regulation under AS 11.71.125 if the attorney general makes a written finding that the requirements of AS 11.71.125 are met. The requirements of AS 44.62.190 - 44.62.215 do not apply to the adoption or order of repeal by the attorney general of a regulation to schedule a substance by emergency regulation under AS 11.71.125.

* **Sec. 22.** AS 44.62.260 is amended to read:

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) **Except as provided in (c) of this section, a** [A] regulation adopted as an emergency regulation does not remain in effect more than 120 days unless the adopting agency complies with AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) **Except as provided in (c) of this section, before** [BEFORE] the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 were complied with before submitting the regulation to the lieutenant governor, or that

the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation.

* **Sec. 23.** AS 44.62.260 is amended by adding a new subsection to read:

(c) A substance scheduled by the attorney general by emergency regulation under AS 11.71.125 will remain on the schedule under the emergency regulation for a period not to exceed 1,095 days unless the legislature schedules the substance by law or annuls the regulation by law.

* **Sec. 24.** AS 44.62.270 is amended to read:

Sec. 44.62.270. State policy. It is the state policy that emergencies are held to a minimum and are rarely found to exist. **Nothing in this section limits the attorney general from scheduling a substance by emergency regulation under AS 11.71.125.**

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 12.30.011 (a) - (c), (g), and (i), as amended by secs. 9 - 13 of this Act, and AS 12.30.011(m), enacted by sec. 14 of this Act, have the effect of changing Rule 41, Alaska Rules of Criminal Procedure, by changing the conditions of release for certain defendants.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 12.30.006(b), as amended by sec. 8 of this Act, AS 12.30.011 (a) - (c), (g), and (i), as amended by secs. 9 - 13 of this Act, and AS 12.30.011(m), enacted by sec. 14 of this Act, apply to offenses committed on or after the effective date of secs. 8 and 9 - 14 of this Act.

* **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Sections 9 - 14 of this Act take effect only if sec. 25 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

* **Sec. 28.** If secs. 9 - 14 of this Act take effect under sec. 27 of this Act, they take effect

1 immediately under AS 01.10.070(c).

2 * **Sec. 29.** Sections 1, 8, 15, 16, and 25 - 27 of this Act take effect immediately under
3 AS 01.10.070(c).