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Martin  
3/31/17

**CS FOR SENATE BILL NO. 54(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR COGHILL

**A BILL**

**FOR AN ACT ENTITLED**

"An Act relating to crime and criminal law; relating to violation of condition of release; relating to sex trafficking; relating to sentencing; relating to imprisonment; relating to parole; relating to probation; relating to driving without a license; relating to the pretrial services program; and providing for an effective date."

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

\* **Section 1.** AS 11.56.757(a) is amended to read:

(a) A person commits the **crime** [OFFENSE] of violation of condition of release if the person

(1) has been charged with a crime or convicted of a crime;

(2) has been released under AS 12.30; and

(3) violates a condition of release imposed by a judicial officer under AS 12.30, other than the requirement to appear as ordered by a judicial officer.

\* **Sec. 2.** AS 11.56.757(b) is amended to read:

(b) Violation of condition of release is a **class B misdemeanor** [VIOLATION

PUNISHABLE BY A FINE OF UP TO \$1,000].

\* **Sec. 3.** AS 11.66.130(a) is amended to read:

(a) A person commits the crime of sex trafficking in the third degree if [, WITH INTENT TO PROMOTE PROSTITUTION,] the person

(1) receives compensation for prostitution services rendered by another; and

(2) with the intent to promote prostitution,

(A) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(B) [(2)] as other than a patron of a prostitute, induces or causes another person who is 20 years of age or older to engage in prostitution;

(C) [(3) AS OTHER THAN A PROSTITUTE RECEIVING COMPENSATION FOR PERSONALLY RENDERED PROSTITUTION SERVICES,] receives or agrees to receive money or other property under an agreement or understanding that the money or other property is derived from prostitution; or

(D) [(4)] engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

\* **Sec. 4.** AS 11.66.135(a) is amended to read:

(a) A person commits the crime of sex trafficking in the fourth degree if the person

(1) receives compensation for prostitution services rendered by another; and

(2) engages in conduct that institutes, aids, or facilitates prostitution under circumstances not proscribed under AS 11.66.130(a)(2)(D) [AS 11.66.130(a)(4)].

\* **Sec. 5.** AS 11.66.150 is amended by adding a new paragraph to read:

(4) "compensation" does not include any payment for reasonably apportioned shared expenses.

\* **Sec. 6.** AS 12.55.125(e) is amended to read:

(e) Except as provided in (i) of this section, a defendant convicted of a class C

felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, [PROBATION, WITH A SUSPENDED TERM OF IMPRISONMENT OF] zero to one year [18 MONTHS]; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085;

(2) if the offense is a second felony conviction, one to three years;

(3) if the offense is a third felony conviction, two to five years;

(4) if the offense is a first felony conviction, and the defendant violated

(A) AS 08.54.720(a)(15), one to two years;

(B) AS 28.35.030(n)(1)(A) or 28.35.032(p)(1)(A), 120 days to 239 days;

(C) AS 28.35.030(n)(1)(B) or 28.35.032(p)(1)(B), 240 days to 359 days;

(D) AS 28.35.030(n)(1)(C) or 23.35.032(p)(1)(C), 360 days to two years.

**\* Sec. 7.** AS 12.55.125 is amended by adding a new subsection to read:

(q) Other than for convictions subject to a mandatory 99-year sentence, the court shall impose, in addition to an active term of imprisonment imposed under (i) of this section, a minimum period of (1) suspended imprisonment of five years and a minimum period of probation supervision of 15 years for conviction of an unclassified felony, (2) suspended imprisonment of three years and a minimum period of probation supervision of 10 years for conviction of a class A or class B felony, or (3) suspended imprisonment of two years and a minimum period of probation supervision of five years for conviction of a class C felony. The period of probation is in addition to any sentence received under (i) of this section.

**\* Sec. 8.** AS 12.55.135(a) is amended to read:

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than

(1) one year, if the

(A) conviction is for a crime with a mandatory minimum term of 30 days or more of active imprisonment;

(B) trier of fact finds the aggravating factor that the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(C) defendant has previously been convicted two or more times [PAST CRIMINAL CONVICTIONS] for conduct violative of criminal laws, punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced;

(D) conviction is for an assault in the fourth degree under AS 11.41.230; or

(E) conviction is for a violation of

(i) AS 11.41.427;

(ii) AS 11.41.440;

(iii) AS 11.41.460, if the indecent exposure is before a person under 16 years of age; [OR]

(iv) AS 11.61.116(c)(2); or

(v) AS 11.61.118(a)(2);

(2) 60 days, if the defendant has one previous conviction for conduct violative of criminal laws, punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced;

(3) 30 days.

\* **Sec. 9.** AS 12.55.135(b) is amended to read:

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than

(1) 10 days unless otherwise specified in the provision of law defining the offense or in this section;

(2) 90 days if the conviction is for a violation of

(A) AS 11.61.116(c)(1) and the person is 21 years of age or older; or

(B) AS 11.61.120(a)(6) and the person is 21 years of age or older; or

**(3) five days if the conviction is for a violation of AS 11.56.757.**

\* **Sec. 10.** AS 12.55.135(l) is amended to read:

(l) A court sentencing a person convicted of theft in the fourth degree under AS 11.46.150, concealment of merchandise under AS 11.46.220(c)(3), removal of identification marks under AS 11.46.260(b)(3), unlawful possession under AS 11.46.270(b)(3), issuing a bad check under AS 11.46.280(d)(4), or criminal simulation under AS 11.46.530(b)(3) may not impose

(1) a sentence of more than **10** [FIVE] days of **active** [SUSPENDED] imprisonment and a term of probation of more than six months if the person has previously been convicted two or more times of an offense under AS 11.46.110 - 11.46.220, 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of this or another jurisdiction with substantially similar elements; [OR]

(2) a sentence of **more than five days of** active [OR SUSPENDED] imprisonment **and a term of probation of more than six months** if the person has [NOT BEEN PREVIOUSLY CONVICTED, OR HAS] previously been convicted once [,] of an offense under AS 11.46.110 - 11.46.220, 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of this or another jurisdiction with substantially similar elements; or

**(3) a sentence of more than five days of suspended imprisonment and a term of probation of more than six months if the person has not been previously convicted of an offense under AS 11.46.110 - 11.46.220, 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of this or another jurisdiction with substantially similar elements.**

\* **Sec. 11.** AS 12.55.135(p) is amended to read:

(p) If the state seeks to establish an aggravating factor at sentencing

(1) under (a)(1)(C) **or (a)(2)** of this section, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence; the aggravating factor in (a)(1)(C) **or (a)(2)** of this section must be established by clear and convincing evidence before the court sitting

without a jury; all findings must be set out with specificity;

(2) an aggravating factor under (a)(1)(B) of this section shall be presented to a trial jury under procedures set by the court, unless the defendant waives trial by jury, stipulates to the existence of the factor, or consents to have the factor proven under procedures set out in (1) of this subsection; an aggravating factor presented to a jury is established if proved beyond a reasonable doubt; written notice of the intent to establish an aggravating factor must be served on the defendant and filed with the court

(A) not later than 10 days before trial or at a time specified by the court;

(B) not later than 48 hours, or at a time specified by the court, if the court instructs the jury about the option to return a verdict for a lesser included offense; or

(C) not later than five days before entering a plea that results in a finding of guilt or at a time specified by the court unless the defendant waives the notice requirement.

\* **Sec. 12.** AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d), or (e),

(A) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the

commission of another offense are not part of the same criminal episode or objective;

(2) AS 12.55.125(l),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

(B) commission of and conviction for offenses relied on as prior most serious felony offenses must occur in the following order: conviction for the first offense must occur before commission of the second offense, and conviction for the second offense must occur before commission of the offense for which the defendant is being sentenced;

(3) AS 12.55.135(g),

(A) a prior conviction may not be considered if a period of five or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a crime against a person or a crime involving domestic violence is considered a prior conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(4) AS 12.55.125(i),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a sexual felony is a prior conviction for a sexual felony;

(B) a felony conviction in another jurisdiction making it a

crime to commit any lewd and lascivious act upon a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the sexual desires of the defendant or the victim is a prior conviction for a sexual felony;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

**(5) AS 12.55.135(a),**

**(A) a prior conviction may not be considered if a period of five or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;**

**(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony or misdemeanor defined as such under Alaska law at the time the offense was committed is considered a prior conviction;**

**(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective.**

\* Sec. 13. AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a

sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or **11.66.130(a)(2)(B)** [11.66.130(a)(2)] if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200;

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; or

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(e);

\* **Sec. 14.** AS 18.67.101 is amended to read:

**Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The

board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses:

(A) murder in any degree;

(B) manslaughter;

(C) criminally negligent homicide;

(D) assault in any degree;

(E) kidnapping;

(F) sexual assault in any degree;

(G) sexual abuse of a minor;

(H) robbery in any degree;

(I) threats to do bodily harm;

(J) driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is under the influence of an alcoholic beverage, inhalant, or controlled substance;

(K) arson in the first degree;

(L) sex trafficking in violation of AS 11.66.110 or **11.66.130(a)(2)(B)** [11.66.130(a)(2)];

(M) human trafficking in any degree; or

(N) unlawful exploitation of a minor.

\* **Sec. 15.** AS 28.15.011 is amended by adding a new subsection to read:

(d) Violation of (b) of this section is an infraction.

\* **Sec. 16.** AS 29.25.070(g) is amended to read:

(g) If a municipality prescribes a penalty for a violation of a municipal ordinance, including a violation under (a) of this section, and there is a comparable state **crime** [OFFENSE] under AS 11 or AS 28 with elements that are similar to the

municipal ordinance, the municipality may not impose a greater punishment than that imposed for a violation of the state **crime** [LAW]. This subsection applies to home rule and general law municipalities.

\* **Sec. 17.** AS 33.07.010, enacted by sec. 117, ch. 36, SLA 2016, is amended to read:

**Sec. 33.07.010. Pretrial services program; establishment.** The commissioner shall establish and administer a pretrial services program that provides a pretrial risk assessment for all defendants **detained in custody in a correctional facility following arrest and for any defendant for whom the prosecution requests to have a pretrial risk assessment at the next hearing or arraignment. The pretrial services program shall make** [,] recommendations to the court concerning pretrial release decisions, and **provide** supervision of defendants released while awaiting trial as ordered by the court.

\* **Sec. 18.** AS 33.16.130(c) is amended to read:

(c) If the board denies parole, the board shall state the reasons for the denial, identify all of the factors considered relevant to the denial, and provide a written plan for addressing all of the factors relevant to the denial. The board may schedule a subsequent parole hearing at the time of the denial or at a later date [AS FOLLOWS:

(1) FOR THE FIRST PAROLE DENIAL, WITHIN TWO YEARS AFTER THE FIRST PAROLE ELIGIBILITY DATE;

(2) FOR THE SECOND AND SUBSEQUENT DENIALS, WITHIN TWO YEARS AFTER THE MOST RECENT PAROLE HEARING].

\* **Sec. 19.** AS 33.30.061 is amended by adding a new subsection to read:

(d) A prisoner serving a term of imprisonment at a private residence as required by statute when electronic monitoring is not available does not have a liberty interest in that status. The commissioner may return the prisoner to a correctional facility if the commissioner finds that the prisoner has violated the terms and conditions of the imprisonment at the private residence.

\* **Sec. 20.** AS 34.03.360(10) is amended to read:

(10) "illegal activity involving a place of prostitution" means a violation of AS 11.66.120(a)(1) or **11.66.130(a)(2)(A) or (D)** [11.66.130(a)(1) OR (4)];

\* **Sec. 21.** AS 47.37.040 is amended to read:

**Sec. 47.37.040. Duties of department.** The department shall

(1) develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and drug abuse and treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers in cooperation with public and private agencies, organizations, and individuals, and provide technical assistance and consultation services for these purposes;

(2) coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism, drug abuse, and inhalant abuse, and treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers;

(3) cooperate with the Department of Corrections in establishing and conducting programs to provide treatment for alcoholics, intoxicated persons, drug abusers, and inhalant abusers in or on parole from penal institutions;

(4) cooperate with the Department of Education and Early Development, school boards, schools, police departments, courts, and other public and private agencies, organizations, and individuals in establishing programs for the prevention of alcoholism, drug abuse, and inhalant abuse, and treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers, and preparing curriculum materials for use at all levels of school education;

(5) prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and drugs, and the misuse of hazardous volatile substances;

(6) develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers that includes the dissemination of information concerning the nature and effects of alcohol, drugs, and hazardous volatile substances;

(7) organize and foster training programs for all persons engaged in treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers, and establish standards for training paraprofessional alcoholism, drug abuse, and inhalant abuse workers;

(8) sponsor and encourage research into the causes and nature of alcoholism, drug abuse, and inhalant abuse, and the treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers, and serve as a clearinghouse for information relating to alcoholism, drug abuse, and inhalant abuse;

(9) specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) conduct program planning activities approved by the Advisory Board on Alcoholism and Drug Abuse;

(11) review all state health, welfare, and treatment plans to be submitted for federal funding, and advise the commissioner on provisions to be included relating to alcoholics, intoxicated persons, drug abusers, and inhalant abusers;

(12) assist in the development of, and cooperate with, alcohol, drug abuse, and inhalant abuse education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) use the support and assistance of interested persons in the community, particularly recovered alcoholics, drug abusers, and inhalant abusers, to encourage alcoholics, drug abusers, and inhalant abusers to voluntarily undergo treatment;

(14) cooperate with the Department of Public Safety and the Department of Transportation and Public Facilities in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while under the influence of an alcoholic beverage, inhalant, or controlled substance, and develop and approve alcohol information courses required to be taken by drivers under AS 28.15 or made available to drivers to reduce points assessed for violation of traffic laws;

(15) encourage hospitals and other appropriate health facilities to admit without discrimination alcoholics, intoxicated persons, drug abusers, and inhalant abusers and to provide them with adequate and appropriate treatment;

(16) encourage all health insurance programs to include alcoholism and drug abuse as a covered illness;

(17) prepare an annual report covering the activities of the department and notify the legislature that the report is available;

(18) develop and implement a training program on alcoholism and drug abuse for employees of state and municipal governments, and private institutions;

(19) develop curriculum materials on drug and alcohol abuse and the misuse of hazardous volatile substances for use in grades kindergarten through 12, as well as a course of instruction for teachers to be charged with presenting the curriculum;

(20) develop and implement or designate, in cooperation with other state or local agencies, a juvenile alcohol safety action program that provides alcohol and substance abuse screening, referral, and monitoring of persons under 18 years of age who have been referred to it by

(A) a court in connection with a charge or conviction of a violation or misdemeanor related to the use of alcohol or a controlled substance;

(B) the agency responsible for the administration of motor vehicle laws in connection with a license action related to the use of alcohol or a controlled substance; or

(C) department staff after a delinquency adjudication that is related to the use of alcohol or a controlled substance;

(21) develop and implement, or designate, in cooperation with other state or local agencies, an alcohol safety action program that provides services to persons who have been referred by a court under AS 11.71.050(a)(4), AS 28.35.028, 28.35.030, or 28.35.032, or referred by an agency of the state with the responsibility for administering motor vehicle laws in connection with a driver's license action involving the use of alcohol or a controlled substance;

(22) whenever possible, apply evidence-based, research-based, and consensus-based substance abuse and co-occurring substance abuse and mental health disorders treatment practices and remove barriers that prevent the use of those

practices;

(23) collaborate with first responders, hospitals, schools, primary care providers, developmental disability treatment providers, law enforcement, corrections, attorneys, the Alaska Court System, community behavioral treatment providers, Alaska Native organizations, and federally funded programs in implementing programs for co-occurring substance abuse and mental health disorders treatment.

\* **Sec. 22.** AS 11.66.130(b), 11.66.135(b); AS 12.55.125(e)(4)(B), 12.55.125(e)(4)(C), and 12.55.125(e)(4)(D) are repealed.

\* **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

**APPLICABILITY.** (a) The following sections apply to offenses committed on or after the effective date of those sections:

(1) AS 11.56.757(a), as amended by sec. 1 of this Act;

(2) AS 11.56.757(b), as amended by sec. 2 of this Act;

(3) AS 11.66.130(a), as amended by sec. 3 of this Act;

(4) AS 11.66.135(a), as amended by sec. 4 of this Act;

(5) AS 11.66.150(4), enacted by sec. 5 of this Act; and

(6) AS 28.15.011(d), enacted by sec. 15 of this Act.

(b) The following sections apply to sentences imposed on or after the effective date of those sections for conduct occurring on or after the effective date of those sections:

(1) AS 12.55.125(e), as amended by sec. 6 of this Act;

(2) AS 12.55.125(q), enacted by sec. 7 of this Act;

(3) AS 12.55.135(a), as amended by sec. 8 of this Act;

(4) AS 12.55.135(b), as amended by sec. 9 of this Act;

(5) AS 12.55.135(l), as amended by sec. 10 of this Act;

(6) AS 12.55.135(p), as amended by sec. 11 of this Act; and

(7) AS 12.55.145(a), as amended by sec. 12 of this Act.

(c) AS 33.16.130(c), as amended by sec. 18 of this Act, applies to sentences imposed on or after the effective date of sec. 18 of this Act.

\* **Sec. 24.** Section 17 of this Act takes effect January 1, 2018.

\* **Sec. 25.** Except as provided in sec. 24 of this Act, this Act takes effect immediately under

1 AS 01.10.070(c).