

ALASKA STATE LEGISLATURE

House Judiciary Committee



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House Bill 145 Sponsor Statement — Version U

House Bill 145 makes changes and amendments to Alaska law that will improve public safety and make wise use of our public safety resources.

Increased Sentencing Ranges

Increases presumptive sentencing range for first-time class B felony offenders from 0 to 2 years to 90 days to 2 years. This change will ensure that most class B felony offenders serve time in prison.

Increases the maximum sentence for some class A misdemeanors to 90 days and increases the maximum sentence for some class B misdemeanors to 30 days. This change will give judges greater discretion in sentencing individuals convicted of misdemeanor charges.

Establishes enhanced felony sentences for making or possessing methamphetamine in a home or lodging where children live or engaging children in the manufacture of methamphetamine.

Makes viewing or production of an indecent picture of a person under the age of 16 a class C felony. Production of an indecent picture of an adult is also a class C felony. Viewing of an indecent picture of an adult is a class A misdemeanor.

Stronger Penalties for Drug Dealers and Distributors

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

HB 145 further establishes a basis to prosecute repeat offenders of possession of any amount of schedule IA or IIA controlled substances (opiates, heroin, and methamphetamine) at the class C felony level. Specifically, a person commits a felony if they possess any amount of a schedule IA or IIA drug and they have been previously convicted two or more times of drug possession of a schedule IA or IIA controlled substance, either as a felony or as a misdemeanor.

Additional Tools to Prosecute Theft Crimes

Allows prosecutors to aggregate crimes under theft in the second degree if they occur within 180 days, the amount is more than \$750 and less than \$25,000, and the property or services are taken from one or more persons or commercial establishments.

Amends AS 11.46.285, the statute related to fraudulent use of an access device, to include theft of an identification document. This clarification addresses a gap in the statute identified in *Kankanton v. State*, 342 P.3d (Alaska Ct. App. 2015). With the amendment, the offense will include fraudulent use of both an access device and an identification document. HB 145 also restructures the offense levels to a class B felony if the theft using an access device or identification document is \$25,000 or more, a class C felony if the theft is \$75 or more and less than \$25,000, and a class A misdemeanor if the theft is less than \$75. The offense financial levels are different than other theft financial levels because the criminal conduct is a form of identity theft.

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

Removes the provisions that would adjust theft financial levels for inflation from property crime statutes.

Closing Sex Offense and Sex Offender Registration “Loopholes”

Removes marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is incapacitated or unaware that the sexual act is being committed. Because of the complex legal and factual issues that may arise, the defense of marriage still applies in situations where a spouse is the caretaker of their partner who is “mentally incompetent” with dementia or Alzheimer’s, or is mentally ill, but still consents to the contact.

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

Prevents a backlog of untested sexual assault examination kits or rape kits, by: (1) requiring that within 30 days after collection of a sexual assault kit, it is sent to an accredited lab or Department of Public Safety operated laboratory facility; (2) ensuring that the sexual assault kit undergoes testing within one year of the laboratory receiving the kit; and (3) requiring that, within two weeks following completion of testing, reasonable effort be made to notify the victim that testing occurred. Failure to meet this timeline will not cause a case to be dismissed and if a case is resolved prior to testing, it is no longer required. HB 145 also requires the Department of Public Safety to include additional data about which kits were ineligible for testing and why.

Additionally, HB 145 provides definitions for why a sexual assault kit may be ineligible for testing: it is scientifically unviable, is ineligible for CODIS (Combined DNA Index System, a national program that links crimes to DNA) or is an anonymous kit.

Reporting on Sex Offenses

Requires the Department of Law to develop a method to track certain information related to sex offenses and to report about sex offense complaints and disposition of those cases. It also adds a requirement that the Alaska Judicial Council include the data collected by the Department of Law in their annual report.

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

In addition to the five areas addressed above, HB 145 also has other important features. HB 145 clarifies that the court has discretion in determining whether to grant credit for time spent on electronic monitor or in treatment toward service of a sentence. Specifically, before granting any credit, the court must consider and apply the sentencing criteria set forth in AS 12.55.005 and announced by the Alaska Supreme Court in *State v. Chaney*, 477 P.2d 441 (Alaska 1970) to the question of whether to grant credit for time spent on electronic monitoring or a treatment program.

HB 145 amends the second degree terroristic threatening statute to cover an individual who knowingly threatens to commit a crime against a person or property and recklessly disregards the risk that the threats will cause the evacuation of a building, will cause serious public inconvenience, or will place the public or a substantial group of the public in fear of serious physical injury. The amended statute covers real threats of violence as well as false threats.

Finally, HB 145 adjusts the limited circumstances in which a person with a lifetime driver's license revocation may be able to qualify for a license.