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Radford
4/26/19

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES TARR, Spohnholz, Tuck, Rauscher, Hopkins, Fields, Drummond,
Rasmussen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal law and procedure; relating to controlled substances;
2 relating to sentencing; requiring law enforcement agencies to test sexual assault
3 examination kits; requiring notification of completion of testing; relating to reports on
4 untested sexual assault examination kits; amending Rule 6(r)(6), Alaska Rules of
5 Criminal Procedure; and providing for an effective date."

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

7 * **Section 1.** AS 11.41.110(a) is amended to read:

8 (a) A person commits the crime of murder in the second degree if

9 (1) with intent to cause serious physical injury to another person or
10 knowing that the conduct is substantially certain to cause death or serious physical
11 injury to another person, the person causes the death of any person;

12 (2) the person knowingly engages in conduct that results in the death
13 of another person under circumstances manifesting an extreme indifference to the

value of human life;

(3) under circumstances not amounting to murder in the first degree under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010(a), **11.71.021(a), 11.71.030(a)(2) or (9)** [11.71.030(a)(1), (2), OR (4) - (8)], or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants;

(4) acting with a criminal street gang, the person commits or attempts to commit a crime that is a felony and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants; or

(5) the person with criminal negligence causes the death of a child under the age of 16, and the person has been previously convicted of a crime involving a child under the age of 16 that was

(A) a felony violation of AS 11.41;

(B) in violation of a law or ordinance in another jurisdiction with elements similar to a felony under AS 11.41; or

(C) an attempt, a solicitation, or a conspiracy to commit a crime listed in (A) or (B) of this paragraph.

* **Sec. 2.** AS 11.41.150(a) is amended to read:

(a) A person commits the crime of murder of an unborn child if the person

(1) with intent to cause the death of an unborn child or of another person, causes the death of an unborn child;

(2) with intent to cause serious physical injury to an unborn child or to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to an unborn child or to another person, causes the death of an unborn child;

(3) while acting alone or with one or more persons, commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010(a), 11.71.021(a), 11.71.030(a)(2) or (9) [11.71.030(a)(1), (2), OR (4) - (8)], or 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of an unborn child;

(4) knowingly engages in conduct that results in the death of an unborn child under circumstances manifesting an extreme indifference to the value of human life; for purposes of this paragraph, a pregnant woman's decision to remain in a relationship in which domestic violence, as defined in AS 18.66.990, has occurred does not constitute conduct manifesting an extreme indifference to the value of human life.

* **Sec. 3.** AS 11.41.410(a) is amended to read:

(a) An offender commits the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent of that person;

(2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) the offender engages in sexual penetration with another person

(A) who [THE OFFENDER KNOWS] is mentally incapable;

and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state; or

(4) the offender engages in sexual penetration with a person who [THE OFFENDER KNOWS] is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

* **Sec. 4.** AS 11.41.420(a) is amended to read:

(a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another person without consent of that person;

(2) the offender engages in sexual contact with a person

(A) who [THE OFFENDER KNOWS] is mentally incapable;

and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state;

(3) the offender engages in sexual penetration with a person who [THE OFFENDER KNOWS] is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

(4) the offender engages in sexual contact with a person who [THE OFFENDER KNOWS] is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

* **Sec. 5.** AS 11.41.425(a) is amended to read:

(a) An offender commits the crime of sexual assault in the third degree if the offender

(1) engages in sexual contact with a person who [THE OFFENDER KNOWS] is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person;

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;

(5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or

(6) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

* **Sec. 6.** AS 11.46.130(a) is amended to read:

(a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more but less than \$25,000;

(2) the property is a firearm or explosive;

(3) the property is taken from the person of another;

(4) the property is taken from a vessel and is vessel safety or survival equipment;

(5) the property is taken from an aircraft and the property is aircraft safety or survival equipment;

(6) the value of the property [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(A) an offense under AS 11.46.120, or an offense under another law or ordinance with similar elements;

(B) a crime set out in this subsection or an offense under another law or ordinance with similar elements;

(C) an offense under AS 11.46.140(a)(1), or an offense under another law or ordinance with similar elements; or

(D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or ordinance with similar elements; or

(7) the property is an access device.

* **Sec. 7.** AS 11.46.140(a) is amended to read:

(a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750; or

(2) [REPEALED]

(3) [REPEALED]

(4) the value of the property is less than \$250 and, within the preceding five years, the person has been convicted and sentenced on three or more separate occasions in this or another jurisdiction of theft or concealment of merchandise, or an offense under another law or ordinance with similar elements.

* **Sec. 8.** AS 11.46.150(a) is amended to read:

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

commits theft as defined in AS 11.46.100 and the value of the property or services [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$250.

* **Sec. 9.** AS 11.46.220(c) is amended to read:

(c) Concealment of merchandise is

(1) a class C felony if

(A) the merchandise is a firearm;

(B) the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more; or

(C) the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(i) the offense of concealment of merchandise under this paragraph or (2)(A) of this subsection, or an offense under another law or ordinance with similar elements; or

(ii) an offense under AS 11.46.120, 11.46.130, or 11.46.140(a)(1), or an offense under another law or ordinance with similar elements;

(2) a class A misdemeanor if

(A) the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750; or

(B) [REPEALED]

(C) the value of the merchandise is less than \$250 and, within the preceding five years, the person has been convicted and sentenced on three or more separate occasions of the offense of concealment of merchandise or theft in any degree, or an offense under another law or ordinance with similar elements;

(3) a class B misdemeanor if the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$250.

* **Sec. 10.** AS 11.46.260(b) is amended to read:

(b) Removal of identification marks is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$250.

* **Sec. 11.** AS 11.46.270(b) is amended to read:

(b) Unlawful possession is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$250.

* **Sec. 12.** AS 11.46.280(d) is amended to read:

(d) Issuing a bad check is

(1) a class B felony if the face amount of the check is \$25,000 or more;

(2) a class C felony if the face amount of the check [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more but less than \$25,000;

(3) a class A misdemeanor if the face amount of the check [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750;

(4) a class B misdemeanor if the face amount of the check [,

ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$250.

* **Sec. 13.** AS 11.46.285(b) is amended to read:

(b) Fraudulent use of an access device is

(1) a class B felony if the value of the property or services obtained is \$25,000 or more;

(2) a class C felony if the value of the property or services obtained [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more but less than \$25,000;

(3) a class A misdemeanor if the value of the property or services obtained [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$750.

* **Sec. 14.** AS 11.46.295 is amended to read:

Sec. 11.46.295. Prior convictions. For purposes of considering prior convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) **or 11.46.140(a)(4)** or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c),

(1) a conviction for an offense under another law or ordinance with similar elements is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed;

(2) a conviction for an offense under Alaska law where the value of the property or services for the offense was lower than the value of property or services for the offense under current Alaska law is a prior conviction for that offense; and

(3) the court shall consider the date of a prior conviction as occurring on the date that sentence is imposed for the prior offense.

* **Sec. 15.** AS 11.46.360(a) is amended to read:

(a) A person commits the crime of vehicle theft in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right, the person drives, tows away, or takes

(1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;

(2) the propelled vehicle of another and

(A) the vehicle or any other property of another is damaged in a total amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of \$750 or more;

(B) the owner incurs reasonable expenses as a result of the loss of use of the vehicle, in a total amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of \$750 or more; or

(C) the owner is deprived of the use of the vehicle for seven days or more;

(3) the propelled vehicle of another and the vehicle is marked as a police or emergency vehicle; or

(4) the propelled vehicle of another and, within the preceding seven years, the person was convicted under

(A) this section or AS 11.46.365;

(B) former AS 11.46.482(a)(4) or (5);

(C) former AS 11.46.484(a)(2);

(D) AS 11.46.120 - 11.46.140 of an offense involving the theft of a propelled vehicle; or

(E) a law or ordinance of this or another jurisdiction with elements substantially similar to those of an offense described in (A) - (D) of this paragraph.

* **Sec. 16.** AS 11.46.482(a) is amended to read:

(a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of \$750 or more;

(2) the person recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means; or

(3) the person knowingly

(A) defaces, damages, or desecrates a cemetery or the contents

of a cemetery or a tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected;

(B) removes human remains or associated burial artifacts from a cemetery, tomb, grave, or memorial regardless of whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected.

* **Sec. 17.** AS 11.46.484(a) is amended to read:

(a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of \$250 or more but less than \$750;

(2) the person tampers with a fire protection device in a building that is a public place;

(3) the person knowingly accesses a computer, computer system, computer program, computer network, or part of a computer system or network;

(4) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or

(5) the person knowingly removes, relocates, defaces, alters, obscures, shoots at, destroys, or otherwise tampers with an official traffic control device or damages the work on a highway under construction.

* **Sec. 18.** AS 11.46.486(a) is amended to read:

(a) A person commits the crime of criminal mischief in the fifth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, the person tampers with property of another;

(2) with intent to damage property of another, the person damages property of another in an amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] less than \$250; or

(3) the person rides in a propelled vehicle and, with criminal negligence, disregards the fact that it has been stolen or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

* **Sec. 19.** AS 11.46.530(b) is amended to read:

(b) Criminal simulation is

(1) a class C felony if the value of what the object purports to represent [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more;

(2) a class A misdemeanor if the value of what the object purports to represent [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$250 or more but less than \$750;

(3) a class B misdemeanor if the value of what the object purports to represent [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$250.

* **Sec. 20.** AS 11.46.620(d) is amended to read:

(d) Misapplication of property is

(1) a class C felony if the value of the property misapplied [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more;

(2) a class A misdemeanor if the value of the property misapplied [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than \$750.

* **Sec. 21.** AS 11.46.730(c) is amended to read:

(c) Defrauding creditors is a class A misdemeanor unless that secured party, judgment creditor, or creditor incurs a pecuniary loss [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of \$750 or more as a result of the defendant's conduct, in which case defrauding secured creditors is

(1) a class B felony if the loss is \$25,000 or more;

(2) a class C felony if the loss [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is \$750 or more but less than \$25,000.

* **Sec. 22.** AS 11.56.320(a) is amended to read:

(a) One commits the crime of escape in the third degree if one

(1) removes oneself from official detention during any lawful movement or activity incident to confinement within a correctional facility for a misdemeanor; [OR]

(2) violates AS 11.56.335 or 11.56.340 and leaves or attempts to leave the state;

(3) while under official detention for a misdemeanor,

(A) removes, tampers with, or disables the electronic monitoring equipment; or

(B) without prior authorization, leaves one's residence or other place designated by the commissioner of corrections or the commissioner of health and social services for service by electronic monitoring; or

(4) while on release under AS 12.30,

(A) removes, tampers with, or disables the electronic monitoring equipment; or

(B) without prior authorization, leaves one's residence or other place designated by a judicial officer as a condition of release.

* **Sec. 23.** AS 11.56.730(a) is amended to read:

(a) A person commits the **crime** [OFFENSE] of failure to appear if the person

(1) is released under the provisions of AS 12.30;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) with criminal negligence does not appear before the court or judicial officer at the time and place of the scheduled hearing.

* **Sec. 24.** AS 11.56.730(d) is amended to read:

(d) Failure to appear is a

(1) class C felony if the person was released in connection with a charge of a felony or while awaiting sentence or appeal after conviction of a felony [AND THE PERSON

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

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

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

a

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

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

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

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

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

* **Sec. 25.** AS 11.71 is amended by adding a new section to read:

Sec. 11.71.021. Misconduct involving a controlled substance in the second degree. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person

(1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver;

(2) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

or

(B) an immediate precursor of methamphetamine, or its salts,

1 isomers, or salts of isomers;

2 (3) possesses an immediate precursor of methamphetamine, or the
3 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,
4 with the intent to manufacture any material, compound, mixture, or preparation that
5 contains methamphetamine, or its salts, isomers, or salts of isomers;

6 (4) possesses a listed chemical with intent to manufacture any material,
7 compound, mixture, or preparation that contains

8 (A) methamphetamine, or its salts, isomers, or salts of isomers;

9 or

10 (B) an immediate precursor of methamphetamine, or its salts,
11 isomers, or salts of isomers;

12 (5) possesses methamphetamine in an organic solution with intent to
13 extract from it methamphetamine or its salts, isomers, or salts of isomers; or

14 (6) under circumstances not proscribed under AS 11.71.010(a)(2),
15 delivers

16 (A) an immediate precursor of methamphetamine, or the salts,
17 isomers, or salts of isomers of the immediate precursor of methamphetamine,
18 to another person with reckless disregard that the precursor will be used to
19 manufacture any material, compound, mixture, or preparation that contains
20 methamphetamine, or its salts, isomers, or salts of isomers; or

21 (B) a listed chemical to another person with reckless disregard
22 that the listed chemical will be used to manufacture any material, compound,
23 mixture, or preparation that contains

24 (i) methamphetamine, or its salts, isomers, or salts of
25 isomers;

26 (ii) an immediate precursor of methamphetamine, or its
27 salts, isomers, or salts of isomers; or

28 (iii) methamphetamine or its salts, isomers, or salts of
29 isomers in an organic solution.

30 (b) In a prosecution under (a) of this section, possession of more than six
31 grams of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, or

the salts, isomers, or salts of isomers of those chemicals is prima facie evidence that the person intended to use the listed chemicals to manufacture, to aid or abet another person to manufacture, or to deliver to another person who intends to manufacture methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers of methamphetamine or its immediate precursors. The prima facie evidence described in this subsection does not apply to a person who possesses

(1) the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals

(A) and the listed chemical was dispensed to the person under a valid prescription; or

(B) in the ordinary course of a legitimate business, or an employee of a legitimate business, as a

(i) retailer or as a wholesaler;

(ii) wholesale drug distributor licensed by the Board of Pharmacy;

(iii) manufacturer of drug products licensed by the Board of Pharmacy;

(iv) pharmacist licensed by the Board of Pharmacy; or

(v) health care professional licensed by the state; or

(2) less than 24 grams of ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals, kept in a locked storage area on the premises of a legitimate business or nonprofit organization operating a camp, lodge, school, day care center, treatment center, or other organized group activity, and the location or nature of the activity, or the age of the participants, makes it impractical for the participants in the activity to obtain medicinal products.

(c) In this section, "listed chemical" means a chemical described under AS 11.71.200.

(d) Misconduct involving a controlled substance in the second degree is a class A felony.

* **Sec. 26.** AS 11.71.030(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third [SECOND] degree if the person

(1) manufactures or delivers, or possesses with intent to manufacture or deliver,

(A) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one gram or more containing a schedule IA controlled substance;

(B) 25 or more tablets, ampules, or syrettes containing a schedule IA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2.5 grams or more containing a schedule IIA or IIIA controlled substance; or

(D) 50 or more tablets, ampules, or syrettes containing a schedule IIA or IIIA controlled substance;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance;

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus;

(4) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(5) possesses an immediate precursor of methamphetamine, or the

1 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,
2 with the intent to manufacture any material, compound, mixture, or preparation that
3 contains methamphetamine, or its salts, isomers, or salts of isomers;

4 (6) possesses a listed chemical with intent to manufacture any material,
5 compound, mixture, or preparation that contains

6 (A) methamphetamine, or its salts, isomers, or salts of isomers;

7 or

8 (B) an immediate precursor of methamphetamine, or its salts,
9 isomers, or salts of isomers;

10 (7) possesses methamphetamine in an organic solution with intent to
11 extract from it methamphetamine or its salts, isomers, or salts of isomers; [OR]

12 (8) under circumstances not proscribed under AS 11.71.010(a)(2),
13 delivers

14 (A) an immediate precursor of methamphetamine, or the salts,
15 isomers, or salts of isomers of the immediate precursor of methamphetamine,
16 to another person with reckless disregard that the precursor will be used to
17 manufacture any material, compound, mixture, or preparation that contains
18 methamphetamine, or its salts, isomers, or salts of isomers; or

19 (B) a listed chemical to another person with reckless disregard
20 that the listed chemical will be used to manufacture any material, compound,
21 mixture, or preparation that contains

22 (i) methamphetamine, or its salts, isomers, or salts of
23 isomers;

24 (ii) an immediate precursor of methamphetamine, or its
25 salts, isomers, or salts of isomers; or

26 (iii) methamphetamine or its salts, isomers, or salts of
27 isomers in an organic solution; or

28 **(9) under circumstances not proscribed under AS 11.71.021(a)(2) -**
29 **(6), manufactures or delivers any amount of a schedule IIA or IIIA controlled**
30 **substance or possesses any amount of a schedule IIA or IIIA controlled substance**
31 **with intent to manufacture or deliver.**

* **Sec. 27.** AS 11.71.030(d) is amended to read:

(d) Misconduct involving a controlled substance in the **third** [SECOND] degree is a class B felony.

* **Sec. 28.** AS 11.71.040(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the **fourth** [THIRD] degree if the person

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a

(i) schedule IA controlled substance [LISTED IN AS 11.71.140(e)];

(ii) IIA controlled substance except a controlled substance listed in AS 11.71.150(e)(11) - (15);

(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(i) three grams or more containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams or more containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(iii) 500 milligrams or more of a schedule IIA controlled substance listed in AS 11.71.150(e)(11) - (15);

(D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more containing a schedule VA controlled substance;

(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance; or

(G) 25 or more plants of the genus cannabis;

(4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus;

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;

(6) makes, delivers, or possesses a punch, die, plate, stone, or other thing that prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these on a drug, drug container, or labeling so as to render the drug a counterfeit substance;

(7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under AS 17.30;

(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(10) affixes a false or forged label to a package or other container containing any controlled substance; or

(11) manufactures or delivers, or possesses with the intent to manufacture or deliver,

(A) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one gram containing a schedule IA controlled substance;

(B) less than 25 tablets, ampules, or syrettes containing a schedule IA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than 2.5 grams containing a schedule IIA or IIIA controlled substance; or

(D) less than 50 tablets, ampules, or syrettes containing a schedule IIA or IIIA controlled substance.

* **Sec. 29.** AS 11.71.040(d) is amended to read:

(d) Misconduct involving a controlled substance in the **fourth** [THIRD] degree is a class C felony.

* **Sec. 30.** AS 11.71.050 is amended to read:

Sec. 11.71.050. Misconduct involving a controlled substance in the fifth [FOURTH] degree. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the **fifth** [FOURTH] degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance;

(2) [REPEALED]

(3) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30; [OR]

(4) under circumstances not proscribed under AS 11.71.030(a)(3), 11.71.040(a)(3), 11.71.040(a)(4), or 11.71.060(a)(2), possesses any amount of a schedule IA, IIA, IIIA, IVA, VA, or VIA controlled substance; or

(5) possesses

(A) less than 25 tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than

(i) three grams containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams but more than six grams containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(iii) 500 milligrams containing a schedule IIA controlled substance listed in AS 11.71.150(e)(11) - (15);

(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;

(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing a schedule VA controlled substance; or

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance.

(b) Misconduct involving a controlled substance in the fifth [FOURTH] degree is a class A misdemeanor.

* **Sec. 31.** AS 11.71.060 is amended to read:

Sec. 11.71.060. Misconduct involving a controlled substance in the sixth [FIFTH] degree. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth [FIFTH] degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance;

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(A) less than one ounce containing a schedule VIA controlled substance;

(B) six grams or less containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(3) refuses entry into a premise for an inspection authorized under AS 17.30.

(b) Misconduct involving a controlled substance in the sixth [FIFTH] degree is a class B misdemeanor.

* **Sec. 32.** AS 11.71.311(a) is amended to read:

(a) A person may not be prosecuted for a violation of AS 11.71.030(a)(3), 11.71.040(a)(3) or (4), 11.71.050(a)(5) [11.71.050(a)(4)], or 11.71.060(a)(1) or (2) if that person

(1) sought, in good faith, medical or law enforcement assistance for another person who the person reasonably believed was experiencing a drug overdose and

(A) the evidence supporting the prosecution for an offense under AS 11.71.030(a)(3), 11.71.040(a)(3) or (4), 11.71.050(a)(5) [11.71.050(a)(4)], or 11.71.060(a)(1) or (2) was obtained or discovered as a result of the person seeking medical or law enforcement assistance;

(B) the person remained at the scene with the other person until medical or law enforcement assistance arrived; and

(C) the person cooperated with medical or law enforcement personnel, including by providing identification;

(2) was experiencing a drug overdose and sought medical assistance, and the evidence supporting a prosecution for an offense under AS 11.71.030(a)(3), 11.71.040(a)(3) or (4), 11.71.050(a)(5) [11.71.050(a)(4)], or 11.71.060(a)(1) or (2)

was obtained as a result of the overdose and the need for medical assistance.

* **Sec. 33.** AS 12.55.125(d) is amended to read:

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 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 (2) of this subsection, one [ZERO] to three [TWO] years; 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 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

(2) if the offense is a first felony conviction,

(A) the defendant violated AS 11.41.130, and the victim was

[(A)] a child under 16 years of age, two to four years; [OR]

(B) two to four years if the conviction is for attempt, solicitation, or conspiracy to manufacture related to methamphetamine under AS 11.31 and AS 11.71.021(a)(2)(A) or (B), and

(i) the attempted manufacturing occurred, or the solicited or conspired offense was to have occurred, in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of an attempt to manufacture, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present [WAS 16 YEARS OF AGE OR OLDER, ONE TO THREE YEARS];

(3) if the offense is a second felony conviction, four [TWO] to seven [FIVE] years;

(4) if the offense is a third felony conviction, six [FOUR] to 10 years.

* **Sec. 34.** AS 34.03.360(7) is amended to read:

(7) "illegal activity involving a controlled substance" means a violation of AS 11.71.010(a), 11.71.021(a), 11.71.030(a)(2) or (9) [11.71.030(a)(1), (2), OR (4) - (8)], or 11.71.040(a)(1), (2), or (5);

* **Sec. 35.** AS 44.41 is amended by adding a new section to read:

Sec. 44.41.065. Sexual assault examination kits. (a) When a law enforcement agency collects a sexual assault examination kit under AS 18.68.010, the agency shall

(1) within 30 days after the agency collects the sexual assault examination kit, send the sexual assault examination kit to an accredited laboratory in coordination with the Department of Public Safety or a laboratory operated by the Department of Public Safety;

(2) ensure that the laboratory to which the sexual assault examination kit is sent under (1) of this subsection conducts a serological or DNA test on the sexual assault examination kit within one year after the laboratory receives the sexual assault examination kit; and

(3) within two weeks after the laboratory that receives the sexual assault examination kit under (1) of this subsection completes serological or DNA testing, make a reasonable effort to notify the victim from whom the sexual assault examination kit was collected that the sexual assault examination kit has been tested.

(b) A criminal action may not be dismissed nor the evidence deemed nonadmissible for failure to be tested within the times established in (a)(1) and (2) of this section.

(c) If a case is resolved before a sexual assault examination kit is tested, a law enforcement agency is not required to meet the time limits established in (a) of this section.

(d) In this section,

(1) "law enforcement agency" or "agency" has the meaning given to "law enforcement agency" in AS 12.36.090;

(2) "victim" has the meaning given in AS 11.41.470.

* **Sec. 36.** AS 44.41.070(a) is amended to read:

(a) By September 1 of each year, each law enforcement agency and state department charged with the maintenance, storage, and preservation of sexual assault examination kits shall conduct an inventory of untested sexual assault examination kits and report, in writing, to the Department of Public Safety the number of untested sexual assault examination kits in the possession of the agency or department, the number of sexual assault examination kits that the law enforcement agency or state department has determined is ineligible for testing under (e) of this section, with the reason or reasons the untested sexual assault examination kits were determined to be ineligible for testing, and the date on which each untested sexual assault examination kit was collected.

* **Sec. 37.** AS 44.41.070(b) is amended to read:

(b) By November 1 of each year, the Department of Public Safety shall prepare and transmit a report to the president of the senate and the speaker of the house of representatives that contains

(1) the number of untested sexual assault examination kits stored by each law enforcement agency or department and the number of sexual assault examination kits that the law enforcement agency or state department has determined is ineligible for testing under (e) of this section, with the reason or reasons the untested sexual assault examination kits were determined to be ineligible for testing;

(2) the date each untested sexual assault examination kit was collected;
and

(3) a plan for addressing the backlog and prevention of a backlog of untested sexual assault examination kits.

* **Sec. 38.** AS 44.41.070 is amended by adding a new subsection to read:

(e) A sexual assault examination kit is ineligible for testing if the law enforcement agency or state department finds that the sexual assault examination kit

- (1) is scientifically unviable;
- (2) does not meet eligibility requirements for inclusion in the Combined DNA Index System database; or
- (3) was collected from a person who wishes to remain anonymous.

* **Sec. 39.** The uncoded law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 6(r)(6), Alaska Rules of Criminal Procedure, is amended to read:

(6) When a prior conviction is an element of an offense [IN A PROSECUTION FOR DRIVING WHILE INTOXICATED UNDER AS 28.35.030(n) OR FOR REFUSAL TO SUBMIT TO A CHEMICAL TEST UNDER AS 28.35.032(p)], hearsay evidence received through the Alaska Public Safety Information Network or from other government agencies of prior convictions [OF DRIVING WHILE INTOXICATED OR REFUSAL TO SUBMIT TO A CHEMICAL TEST] may be presented to the grand jury.

* **Sec. 40.** AS 11.46.980(d), 11.46.982; AS 11.56.330(a)(3); AS 11.71.030(a)(1), 11.71.030(a)(4), 11.71.030(a)(5), 11.71.030(a)(6), 11.71.030(a)(7), 11.71.030(a)(8), 11.71.030(c), 11.71.030(e), 11.71.040(a)(11), 11.71.050(a)(4); AS 12.25.180(b)(3); AS 12.55.135(l), 12.55.135(n), and 12.55.145(a)(5) are repealed.

* **Sec. 41.** The uncoded 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 11.41.110(a), as amended by sec. 1 of this Act;
- (2) AS 11.41.150(a), as amended by sec. 2 of this Act;
- (3) AS 11.41.410(a), as amended by sec. 3 of this Act;
- (4) AS 11.41.420(a), as amended by sec. 4 of this Act;
- (5) AS 11.41.425(a), as amended by sec. 5 of this Act;
- (6) AS 11.46.130(a), as amended by sec. 6 of this Act;
- (7) AS 11.46.140(a), as amended by sec. 7 of this Act;
- (8) AS 11.46.150(a), as amended by sec. 8 of this Act;
- (9) AS 11.46.220(c), as amended by sec. 9 of this Act;
- (10) AS 11.46.260(b), as amended by sec. 10 of this Act;
- (11) AS 11.46.270(b), as amended by sec. 11 of this Act;
- (12) AS 11.46.280(d), as amended by sec. 12 of this Act;

- (13) AS 11.46.285(b), as amended by sec. 13 of this Act;
(14) AS 11.46.295, as amended by sec. 14 of this Act;
(15) AS 11.46.360(a), as amended by sec. 15 of this Act;
(16) AS 11.46.482(a), as amended by sec. 16 of this Act;
(17) AS 11.46.484(a), as amended by sec. 17 of this Act;
(18) AS 11.46.486(a), as amended by sec. 18 of this Act;
(19) AS 11.46.530(b), as amended by sec. 19 of this Act;
(20) AS 11.46.620(d), as amended by sec. 20 of this Act;
(21) AS 11.46.730(c), as amended by sec. 21 of this Act;
(22) AS 11.56.320(a), as amended by sec. 22 of this Act;
(23) AS 11.56.730(a), as amended by sec. 23 of this Act;
(24) AS 11.56.730(d), as amended by sec. 24 of this Act;
(25) AS 11.71.021, enacted by sec. 25 of this Act;
(26) AS 11.71.030(a), as amended by sec. 26 of this Act;
(27) AS 11.71.030(d), as amended by sec. 27 of this Act;
(28) AS 11.71.040(a), as amended by sec. 28 of this Act;
(29) AS 11.71.040(d), as amended by sec. 29 of this Act;
(30) AS 11.71.050, as amended by sec. 30 of this Act;
(31) AS 11.71.060, as amended by sec. 31 of this Act;
(32) AS 11.71.311(a), as amended by sec. 32 of this Act.

(b) AS 12.55.125(d), as amended by sec. 33 of this Act, applies to sentences imposed on or after the effective date of sec. 33 of this Act for conduct occurring on or after the effective date of sec. 33 of this Act.

*** Sec. 42.** The uncoded law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 39 of this Act takes effect only if sec. 39 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. 43.** This Act takes effect July 1, 2019.