

HOUSE BILL NO. 379

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE PRAX

Introduced: 2/20/24

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the driving while under the influence diversion program for**
2 **eligible persons charged with driving while under the influence; relating to judgment for**
3 **restitution; relating to suspended imposition of sentence; relating to records kept by the**
4 **Department of Administration; relating to operating a vehicle, aircraft, or watercraft**
5 **while under the influence of an alcoholic beverage, inhalant, or controlled substance;**
6 **amending Rule 9, Alaska Rules of Administration, and Rule 39, Alaska Rules of**
7 **Criminal Procedure; and providing for an effective date."**

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

9 *** Section 1.** AS 04.16.160(a) is amended to read:

10 (a) Except as otherwise provided by law, a person who is 21 years of age or
11 older may not purchase alcoholic beverages if the person has been ordered to refrain
12 from consuming alcoholic beverages under AS 12.55.015(a)(13) or as part of a
13 sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar

1 municipal ordinance, **as part of the driving while under the influence diversion**
 2 **program under AS 28.35.043**, as a condition of probation or parole from a conviction
 3 under AS 28.35.030, 28.35.032, or a similar municipal ordinance, or as a condition of
 4 probation or parole for any other crime. The restriction on purchasing alcoholic
 5 beverages applies during the period that the person is required to refrain from
 6 consuming alcoholic beverages under the sentence or condition of probation or parole.

7 * **Sec. 2.** AS 09.38.500(8) is amended to read:

8 (8) "judgment of restitution"

9 (A) includes restitution ordered

10 (i) under AS 47.12.120 that is considered as a civil
 11 judgment enforceable by execution under AS 47.12.170; [AND]

12 (ii) as part of a sentence under AS 12.55.025(f) that is
 13 considered as a judgment for money entered in a civil action; **and**

14 **(iii) as part of the diversion agreement under**
 15 **AS 28.35.043;**

16 (B) does not include a judgment for

17 (i) civil damages for torts under state law; or

18 (ii) restitution as a result of a violation of state law that
 19 is not a felony or misdemeanor;

20 * **Sec. 3.** AS 12.55.039(b) is amended to read:

21 (b) A court may not fail to impose the surcharge required under this section.

22 The surcharge may not be waived, deferred, or suspended, **unless the defendant is a**
 23 **participant in the driving while under the influence diversion program under**
 24 **AS 28.35.043**. A court may allow a defendant who is unable to pay the surcharge
 25 required to be imposed under this section to perform community work under
 26 AS 12.55.055(c) in lieu of the surcharge.

27 * **Sec. 4.** AS 12.55.085(a) is amended to read:

28 (a) Except as provided in **AS 28.35.043** or (f) of this section, if it appears that
 29 there are circumstances in mitigation of the punishment, or that the ends of justice will
 30 be served, the court may, in its discretion, suspend the imposition of sentence and may
 31 direct that the suspension continue for a period of time, not exceeding the maximum

1 term of sentence that may be imposed or a period of one year, whichever is greater,
2 and upon the terms and conditions that the court determines, and shall place the person
3 on probation, under the charge and supervision of the probation officer of the court
4 during the suspension.

5 * **Sec. 5.** AS 12.55.155(d) is amended to read:

6 (d) The following factors shall be considered by the sentencing court if proven
7 in accordance with this section, and may allow imposition of a sentence below the
8 presumptive range set out in AS 12.55.125:

9 (1) the offense was principally accomplished by another person, and
10 the defendant manifested extreme caution or sincere concern for the safety or well-
11 being of the victim;

12 (2) the defendant, although an accomplice, played only a minor role in
13 the commission of the offense;

14 (3) the defendant committed the offense under some degree of duress,
15 coercion, threat, or compulsion insufficient to constitute a complete defense, but that
16 significantly affected the defendant's conduct;

17 (4) the conduct of a youthful defendant was substantially influenced by
18 another person more mature than the defendant;

19 (5) the conduct of an aged defendant was substantially a product of
20 physical or mental infirmities resulting from the defendant's age;

21 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the
22 defendant acted with serious provocation from the victim;

23 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,
24 the victim provoked the crime to a significant degree;

25 (8) before the defendant knew that the criminal conduct had been
26 discovered, the defendant fully compensated or made a good faith effort to fully
27 compensate the victim of the defendant's criminal conduct for any damage or injury
28 sustained;

29 (9) the conduct constituting the offense was among the least serious
30 conduct included in the definition of the offense;

31 (10) the defendant was motivated to commit the offense solely by an

1 overwhelming compulsion to provide for emergency necessities for the defendant's
2 immediate family;

3 (11) after commission of the offense for which the defendant is being
4 sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other
5 persons who committed an offense;

6 (12) the facts surrounding the commission of the offense and any
7 previous offenses by the defendant establish that the harm caused by the defendant's
8 conduct is consistently minor and inconsistent with the imposition of a substantial
9 period of imprisonment;

10 (13) the defendant is convicted of an offense specified in AS 11.71 and
11 the offense involved small quantities of a controlled substance;

12 (14) the defendant is convicted of an offense specified in AS 11.71 and
13 the offense involved the distribution of a controlled substance, other than a schedule
14 IA controlled substance, to a personal acquaintance who is 19 years of age or older for
15 no profit;

16 (15) the defendant is convicted of an offense specified in AS 11.71 and
17 the offense involved the possession of a small amount of a controlled substance for
18 personal use in the defendant's home;

19 (16) in a conviction for assault or attempted assault or for homicide or
20 attempted homicide, the defendant acted in response to domestic violence perpetrated
21 by the victim against the defendant and the domestic violence consisted of aggravated
22 or repeated instances of assaultive behavior;

23 (17) except in the case of an offense defined by AS 11.41 or
24 AS 11.46.400, the defendant has been convicted of a class B or C felony, and, at the
25 time of sentencing, has successfully completed a court-ordered treatment program as
26 defined in AS 28.35.028 that was begun after the offense was committed;

27 (18) except in the case of an offense defined under AS 11.41 or
28 AS 11.46.400 or a defendant who has previously been convicted of a felony, the
29 defendant committed the offense while suffering from a mental disease or defect as
30 defined in AS 12.47.130 that was insufficient to constitute a complete defense but that
31 significantly affected the defendant's conduct;

1 (19) the defendant is convicted of an offense under AS 11.71, and the
2 defendant sought medical assistance for another person who was experiencing a drug
3 overdose contemporaneously with the commission of the offense;

4 (20) except in the case of an offense defined under AS 11.41 or
5 AS 11.46.400, the defendant committed the offense while suffering from a condition
6 diagnosed

7 (A) as a fetal alcohol spectrum disorder, the fetal alcohol
8 spectrum disorder substantially impaired the defendant's judgment, behavior,
9 capacity to recognize reality, or ability to cope with the ordinary demands of
10 life, and the fetal alcohol spectrum disorder, though insufficient to constitute a
11 complete defense, significantly affected the defendant's conduct; in this
12 subparagraph, "fetal alcohol spectrum disorder" means a condition of impaired
13 brain function in the range of permanent birth defects caused by maternal
14 consumption of alcohol during pregnancy; or

15 (B) as combat-related post-traumatic stress disorder or combat-
16 related traumatic brain injury, the combat-related post-traumatic stress disorder
17 or combat-related traumatic brain injury substantially impaired the defendant's
18 judgment, behavior, capacity to recognize reality, or ability to cope with the
19 ordinary demands of life, and the combat-related post-traumatic stress disorder
20 or combat-related traumatic brain injury, though insufficient to constitute a
21 complete defense, significantly affected the defendant's conduct; in this
22 subparagraph, "combat-related post-traumatic stress disorder or combat-related
23 traumatic brain injury" means post-traumatic stress disorder or traumatic brain
24 injury resulting from combat with an enemy of the United States in the line of
25 duty while on active duty as a member of the armed forces of the United
26 States; nothing in this subparagraph is intended to limit the application of (18)
27 of this subsection;

28 (21) the defendant

29 (A) [,] as a condition of release ordered by the court,
30 successfully completed an alcohol and substance abuse monitoring program
31 established under AS 47.38.020;

1 **(B) was a participant in the driving while under the**
2 **influence diversion program under AS 28.35.043.**

3 * **Sec. 6.** AS 12.61.010(a) is amended to read:

4 (a) Victims of crimes have the following rights:

5 (1) the right to be present during any proceeding in

6 (A) the prosecution and sentencing of a defendant if the
7 defendant has the right to be present, including being present during testimony
8 even if the victim is likely to be called as a witness;

9 (B) the adjudication of a minor as provided under
10 AS 47.12.110;

11 (2) the right to be notified by the appropriate law enforcement agency
12 or the prosecuting attorney of any request for a continuance that may substantially
13 delay the prosecution and of the date of trial, sentencing, including a proceeding
14 before a three-judge panel under AS 12.55.175, an appeal, and any hearing in which
15 the defendant's release from custody is considered;

16 (3) the right to be notified that a sentencing hearing or a court
17 proceeding to which the victim has been subpoenaed will not occur as scheduled;

18 (4) the right to receive protection from harm and threats of harm
19 arising out of cooperation with law enforcement and prosecution efforts and to be
20 provided with information as to the protection available;

21 (5) the right to be notified of the procedure to be followed to apply for
22 and receive any compensation under AS 18.67;

23 (6) at the request of the prosecution or a law enforcement agency, the
24 right to cooperate with the criminal justice process without loss of pay and other
25 employee benefits except as authorized by AS 12.61.017 and without interference in
26 any form by the employer of the victim of crime;

27 (7) the right to obtain access to immediate medical assistance and not
28 to be detained for an unreasonable length of time by a law enforcement agency before
29 having medical assistance administered; however, an employee of the law
30 enforcement agency may, if necessary, accompany the person to a medical facility to
31 question the person about the criminal incident if the questioning does not hinder the

1 administration of medical assistance;

2 (8) the right to make a written or oral statement for use in preparation
3 of the presentence report of a felony defendant;

4 (9) the right to appear personally at the defendant's sentencing hearing
5 to present a written statement and to give sworn testimony or an unsworn oral
6 presentation;

7 (10) the right to be informed by the prosecuting attorney, at any time
8 after the defendant's conviction, about the complete record of the defendant's
9 convictions;

10 (11) the right to notice under AS 12.47.095 concerning the status of the
11 defendant found not guilty by reason of insanity;

12 (12) the right to notice under AS 33.16.087 of a hearing concerning
13 special medical parole of the defendant;

14 (13) the right to notice under AS 33.16.120 of a hearing to consider or
15 review discretionary parole of the defendant;

16 (14) the right to notice under AS 33.30.013 of the release or escape of
17 the defendant; [AND]

18 (15) the right to be notified orally and in writing of and receive
19 information about the office of victims' rights from the law enforcement officer
20 initially investigating the crime and from the prosecuting attorney assigned to the
21 offense; at a minimum, the information provided must include the address, telephone
22 number, and Internet address of the office of victims' rights; this paragraph

23 (A) applies only to victims of felonies and to victims of class A
24 misdemeanors if the class A misdemeanor is a crime involving domestic
25 violence or a crime against a person under AS 11.41; if the victim is an
26 unemancipated minor, the law enforcement officer and the prosecuting
27 attorney shall also provide the notice required by this paragraph to the parent
28 or guardian of the minor;

29 (B) is satisfied if, at the time of initial contact with the crime
30 victim, the investigating officer and prosecuting attorney each give each crime
31 victim a brochure or other written material prepared by the office of victims'

1 rights and provided to law enforcement agencies for that purpose; **and**
 2 **(16) the right to notice under AS 28.35.043 of a hearing on a**
 3 **petition for diversion agreement and the right to make a written or oral**
 4 **statement on the petition.**

5 * **Sec. 7.** AS 18.85.100(a) is amended to read:

6 (a) An indigent person who is under formal charge of having committed a
 7 serious crime and the crime has been the subject of an initial appearance or subsequent
 8 proceeding, or is being detained under a conviction of a serious crime, or is on
 9 probation or parole, or is entitled to representation under the Supreme Court
 10 Delinquency or Child in Need of Aid Rules, **as a participant in the driving while**
 11 **under the influence diversion program under AS 28.35.043,** or at a review hearing
 12 under AS 47.12.105(d), or is isolated, quarantined, or required to be tested under an
 13 order issued under AS 18.15.355 - 18.15.395, or is a respondent in a proceeding under
 14 AS 47.30, is entitled

15 (1) to be represented, in connection with the crime or proceeding, by
 16 an attorney to the same extent as a person retaining an attorney is entitled; and

17 (2) to be provided with the necessary services and facilities of this
 18 representation, including investigation and other preparation.

19 * **Sec. 8.** AS 28.15.151(a) is amended to read:

20 (a) The department shall maintain a file of

21 (1) every driver's license application, license or permit, and duplicate
 22 driver's license issued by it;

23 (2) every license that has been suspended, revoked, canceled, limited,
 24 restricted, or denied, and the reasons for those actions;

25 (3) all accident reports required to be forwarded to the department
 26 under this title; [AND]

27 (4) every disqualification of an individual from operating a
 28 commercial motor vehicle; **and**

29 **(5) every diversion agreement entered into by an individual under**
 30 **AS 28.35.043.**

31 * **Sec. 9.** AS 28.35.030(b) is amended to read:

1 (b) Except as provided under (n) of this section, driving while under the
2 influence of an alcoholic beverage, inhalant, or controlled substance is a class A
3 misdemeanor. Upon conviction,

4 (1) the court shall impose a minimum sentence of imprisonment of

5 (A) not less than 72 consecutive hours, require the person to
6 use an ignition interlock device after the person regains the privilege, including
7 any limited privilege, to operate a motor vehicle for a minimum of six months,
8 and impose a fine of not less than \$1,500 if the person has not been previously
9 convicted **and the person did not complete the driving while under the**
10 **influence diversion program under AS 28.35.043;**

11 (B) not less than 20 days, require the person to use an ignition
12 interlock device after the person regains the privilege, including any limited
13 privilege, to operate a motor vehicle for a minimum of 12 months, and impose
14 a fine of not less than \$3,000 if the person has been previously convicted once;

15 (C) not less than 60 days, require the person to use an ignition
16 interlock device after the person regains the privilege, including any limited
17 privilege, to operate a motor vehicle for a minimum of 18 months, and impose
18 a fine of not less than \$4,000 if the person has been previously convicted twice
19 and is not subject to punishment under (n) of this section;

20 (D) not less than 120 days, require the person to use an ignition
21 interlock device after the person regains the privilege, including any limited
22 privilege, to operate a motor vehicle for a minimum of 24 months, and impose
23 a fine of not less than \$5,000 if the person has been previously convicted three
24 times and is not subject to punishment under (n) of this section;

25 (E) not less than 240 days, require the person to use an ignition
26 interlock device after the person regains the privilege, including any limited
27 privilege, to operate a motor vehicle for a minimum of 30 months, and impose
28 a fine of not less than \$6,000 if the person has been previously convicted four
29 times and is not subject to punishment under (n) of this section;

30 (F) not less than 360 days, require the person to use an ignition
31 interlock device after the person regains the privilege, including any limited

1 privilege, to operate a motor vehicle for a minimum of 36 months, and impose
 2 a fine of not less than \$7,000 if the person has been previously convicted more
 3 than four times and is not subject to punishment under (n) of this section;

4 (2) the court may not

5 (A) suspend execution of sentence or grant probation except on
 6 condition that the person

7 (i) serve the minimum imprisonment under (1) of this
 8 subsection;

9 (ii) pay the minimum fine required under (1) of this
 10 subsection;

11 (B) suspend imposition of sentence, **except for a defendant**
 12 **who is a participant in the driving while under the influence diversion**
 13 **program under AS 28.35.043**; or

14 (C) suspend the requirement for an ignition interlock device for
 15 a violation of (a)(1) of this section involving an alcoholic beverage or
 16 intoxicating liquor, singly or in combination, or a violation of (a)(2) of this
 17 section;

18 (3) the court shall revoke the person's driver's license, privilege to
 19 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
 20 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
 21 forfeited under AS 28.35.036; and

22 (4) the court may order that the person, while incarcerated or as a
 23 condition of probation or parole, take a drug or combination of drugs intended to
 24 prevent the consumption of an alcoholic beverage; a condition of probation or parole
 25 imposed under this paragraph is in addition to any other condition authorized under
 26 another provision of law.

27 * **Sec. 10.** AS 28.35 is amended by adding new sections to read:

28 **Sec. 28.35.043. Driving while under the influence diversion program.** (a)

29 The driving while under the influence diversion program is established in the Alaska
 30 Court System.

31 (b) At the initial court appearance or arraignment of a person for an offense

1 under AS 28.35.030, the court shall inform a defendant charged under AS 28.35.030
2 that the defendant may be eligible for participation in the driving while under the
3 influence diversion program. A defendant is eligible if the defendant

4 (1) has never been convicted under AS 28.35.030 or a similar law in
5 another jurisdiction; for purposes of this paragraph, a prior conviction does not include
6 a violation under AS 04.16.050 or a similar law in another jurisdiction;

7 (2) does not have a pending charge under AS 28.35.030 or a similar
8 law in another jurisdiction;

9 (3) was not charged with any other criminal charges in the present
10 offense and the present offense did not involve an accident resulting in death or in
11 physical injury to any person other than the defendant;

12 (4) does not have a pending charge under AS 11.41.100 - 11.41.140 or
13 AS 11.41.200 - 11.41.230, or a similar law in another jurisdiction, that resulted from
14 the defendant's operation of a motor vehicle;

15 (5) at the time of the commission of the present offense, was not
16 participating in the driving while under the influence diversion program under this
17 section or in a similar program in another jurisdiction;

18 (6) has not, within 15 years before the date of the commission of the
19 present offense, participated in the driving while under the influence diversion
20 program in this state or a similar program in another jurisdiction;

21 (7) did not hold a commercial driver's license on the date of the
22 commission of the present offense;

23 (8) was not operating a commercial motor vehicle at the time of the
24 commission of the present offense.

25 (c) A defendant who is eligible for the driving while under the influence
26 diversion program shall file a petition and a filing fee in the amount of \$490 with the
27 court to request admittance to the diversion program. The petition shall be filed within
28 30 days after the date of the defendant's first appearance before a judicial officer,
29 unless a later filing date is allowed by the court for good cause. For purposes of this
30 subsection, an objection to the complaint, a motion to suppress, or a motion for an
31 omnibus hearing do not constitute good cause. A petition may not be filed after entry

1 of a guilty plea or a no contest plea or after the commencement of a trial on the charge.

2 (d) Notwithstanding (c) of this section, a petition may be filed up to 14 days
3 after the date the prosecuting attorney sends laboratory test results of the defendant's
4 urine or blood sample analysis to the defendant's attorney, or to the defendant if the
5 defendant is unrepresented, if

6 (1) the charging document alleges the defendant was driving under the
7 influence of an alcoholic beverage, inhalant, or controlled substance;

8 (2) the defendant has not received notice of what the defendant's blood
9 alcohol content was at the time the conduct occurred or if at the time the conduct
10 occurred the defendant had less than 0.08 percent by weight of alcohol in the blood;
11 and

12 (3) a police officer obtained a urine or blood sample from the
13 defendant.

14 (e) A petition for admittance into the driving while under the influence
15 diversion program shall be made using a form prescribed by the Alaska Court System
16 and made available to a defendant at the initial court appearance or arraignment and
17 include

18 (1) a plea of guilty or no contest to the charge of driving while under
19 the influence of an alcoholic beverage, inhalant, or controlled substance under
20 AS 28.35.030 signed by the defendant;

21 (2) a sworn statement by the defendant that the defendant is eligible to
22 enter into the driving while under the influence diversion program;

23 (3) an agreement by the defendant to complete a screening interview to
24 determine the possible existence and degree of an alcohol or substance abuse problem
25 at an agency or organization designated by the court;

26 (4) an agreement by the defendant to complete, at the defendant's
27 expense, the program of treatment indicated necessary by the screening interview
28 under (3) of this subsection or if, following two negative screening reports of an
29 alcohol or substance abuse problem, ordered by the court;

30 (5) an agreement by the defendant not to use alcoholic beverages,
31 inhalants, or controlled substances during the driving while under the influence

1 diversion program; this agreement does not preclude

2 (A) the consumption of sacramental wine given or provided as
3 part of a religious rite or service;

4 (B) the defendant's use of a prescription drug prescribed for the
5 defendant if the defendant uses the prescribed drug as directed;

6 (C) the defendant's use of a nonprescription drug used as
7 directed on the nonprescription drug's label;

8 (6) a notice to the defendant that, if the court receives notice during the
9 course of the diversion program that the defendant committed an offense under
10 AS 28.35.029 or 28.35.030, the defendant will be in violation of the diversion
11 agreement;

12 (7) an agreement by the defendant to keep the court advised of the
13 defendant's current mailing address during the course of the diversion program;

14 (8) an acknowledgment by the defendant that failure to complete the
15 diversion program will result in subsequent action upon the charge or any other
16 offenses based on the same criminal episode, and that by participation in the diversion
17 program, the defendant has not been placed in jeopardy for the same offense until
18 completion of the program and dismissal of the charge with prejudice;

19 (9) an agreement by the defendant to pay court-appointed attorney fees
20 as determined by the court before the completion of the diversion program; and

21 (10) an agreement by the defendant to pay restitution if ordered by the
22 court, during the diversion period on a schedule determined by the court.

23 (f) The court may allow installment payments for the filing fee for a petition
24 under (c) of this section or may waive all or part of the filing fee or court-appointed
25 attorney fees if a defendant is indigent.

26 (g) The prosecuting attorney may, within 15 days after the date of service, file
27 a written objection to the petition and a request for a hearing.

28 (h) If the commission of the offense resulted in damage to the property of a
29 person other than the defendant, the victim of the property damage has a right to be
30 present and heard at any hearing on a petition for diversion.

31 (i) After the time requested for a hearing has expired or after a hearing

1 requested under (g) of this section has occurred, the court shall determine whether to
2 grant or deny a petition for admittance into the driving while under the influence
3 diversion program under this section. In making a determination under this section, the
4 court

5 (1) shall consider whether a diversion agreement will benefit the
6 defendant and the community;

7 (2) may take into consideration whether

8 (A) there was an early recognition by the defendant during any
9 previous court proceedings that a course of diagnosis and treatment of problem
10 drinking, alcoholism, or substance abuse would be beneficial;

11 (B) there is reasonable probability that the defendant will
12 cooperate with the diagnostic assessment and treatment agencies;

13 (C) the defendant will observe the restrictions contained in the
14 diversion agreement;

15 (D) the offense was committed in a motor vehicle and there
16 was a passenger in the motor vehicle who was under 18 years of age and at
17 least three years younger than the defendant;

18 (3) shall deny the petition if

19 (A) after the date the defendant filed the petition, the defendant
20 was charged or convicted under AS 28.35.030 or a similar law in another
21 jurisdiction for a different criminal episode;

22 (B) the defendant failed to appear at an arraignment on the
23 present offense without good cause;

24 (C) after the date the defendant filed the petition, the defendant
25 participated in the driving while under the influence diversion program or any
26 similar alcohol or drug rehabilitation program, other than a program entered
27 into as a result of the charge for the present offense, in this state or in another
28 jurisdiction;

29 (D) after the date the defendant filed the petition, the defendant
30 was charged with or convicted of an offense under AS 11.41.100 - 11.41.230
31 that resulted from the operation of a motor vehicle in this state or in another

1 jurisdiction;

2 (E) the defendant has been convicted of a prior offense under
3 AS 28.35.030;

4 (4) may not deny the petition because the defendant is a member of the
5 military and has been called or might be called to active duty and the military service
6 will impair the defendant's ability to complete the diversion program.

7 (j) If a court grants a petition for admittance into the driving while under the
8 influence diversion program, the court shall accept the guilty plea or no contest plea
9 filed as part of the petition under (e) of this section, but shall withhold entry of a
10 judgment of conviction. The court shall sign the petition and indicate the date the
11 diversion period begins and ends and the date on which the driving while under the
12 influence offense occurred. If the defendant has not already been processed by the
13 Department of Corrections or a municipal correctional facility on the charge of driving
14 while under the influence of an alcoholic beverage, inhalant, or controlled substance
15 under AS 28.35.030, the court shall require the defendant to submit to processing.

16 (k) The signed and dated petition is the diversion agreement between the
17 defendant and the court. The court shall make the diversion agreement part of the
18 record of the case. The court shall notify the Department of Administration of the
19 diversion agreement within 48 hours after granting the petition.

20 (l) A diversion agreement shall be for a period of one year after the date the
21 court grants the petition. During the diversion period, the court shall stay the criminal
22 offense proceeding pending completion of the diversion agreement or termination of
23 the diversion agreement.

24 (m) If the court denies a petition submitted under (e) of this section, the court
25 shall proceed with the criminal case on the charges brought against the defendant. The
26 guilty plea or no contest plea filed as part of the petition for admittance into the
27 driving while under the influence diversion program under (e) of this section may not
28 be used in the offense proceeding. A statement by the defendant about the offense
29 made during the course of screening or a treatment program to a person employed by
30 the treatment program may not be offered or received as evidence in any criminal or
31 civil action or proceeding arising out of the conduct on which the charge of driving

1 while under the influence of an alcoholic beverage, inhalant, or controlled substance
2 under AS 28.35.030 is based.

3 (n) The court may allow a defendant who is an active duty member of the
4 military to participate in a comparable treatment program conducted by or authorized
5 by a government entity in another jurisdiction to satisfy a treatment program
6 requirement as part of the defendant's diversion agreement.

7 (o) If a victim impact program exists in the community in which the defendant
8 resides, a court may order the defendant to attend a victim impact treatment session as
9 part of the defendant's diversion agreement. If the court orders attendance under this
10 subsection, the court may require the defendant to pay a fee of not less than \$5 and not
11 more than \$50 to the victim impact program to offset the cost of the defendant's
12 participation.

13 (p) A defendant may file a motion for an extension of the diversion period
14 within 30 days before the end of the diversion period or, if the defendant is an active
15 duty member of the military, at any time before the end of the diversion period.

16 (q) The court may grant a motion for extension of the driving while under the
17 influence diversion program if the court finds the defendant made a good faith effort
18 to complete the conditions of the diversion agreement and the defendant is able to
19 complete the conditions of the diversion agreement within the requested extended
20 diversion period. Only one extension may be granted for not more than 180 days from
21 the date the original diversion period ended, unless the defendant is an active duty
22 member of the military or is a member of the military that has received active duty
23 orders and the defendant demonstrates the military service will impair the defendant's
24 ability to complete the conditions of the diversion agreement and no comparable
25 treatment program is available.

26 (r) If the court grants a motion for extension, the defendant shall fully comply
27 with the conditions of the diversion agreement within the extended diversion period. If
28 the court finds the defendant failed to comply with the diversion agreement within the
29 extended diversion period, the court shall enter a guilty plea or no contest plea filed as
30 part of the petition under (e) of this section, shall enter a judgment of conviction, and
31 shall sentence the defendant.

1 (s) If the court denies a motion for extension, the court shall enter the guilty
2 plea or no contest plea included in the petition under (e) of this section, shall enter a
3 judgment of conviction, and shall sentence the defendant.

4 (t) At any time before the completion of a defendant's diversion period and
5 dismissal with prejudice, the court may, on its own motion or on the motion of the
6 prosecuting attorney, issue an order requiring the defendant to appear and show cause
7 as to why the court should not terminate the diversion agreement. The order to show
8 cause must

9 (1) state the reasons for the proposed termination;

10 (2) specify the amount of any fees owed and, if the amount owed is
11 \$500 or less, inform the defendant that the court may dismiss with prejudice the
12 charge of driving while under the influence if the person has complied with and
13 performed all of the conditions of the diversion agreement and pays the remaining
14 amount before or on the date of the hearing; and

15 (3) set an appearance date.

16 (u) At an order to show cause hearing, the court

17 (1) shall terminate the diversion agreement and

18 (A) enter the guilty plea or no contest plea that was filed as part
19 of the petition under (e) of this section if

20 (i) the defendant fails to appear at a hearing on the order
21 to show cause;

22 (ii) the court finds by a preponderance of the evidence
23 that the defendant no longer qualifies for diversion under the conditions
24 described in (b) of this section; or

25 (iii) the court finds by a preponderance of the evidence
26 that the defendant failed to fulfill the terms of the diversion agreement;

27 (B) dismiss the charge with prejudice if the defendant has
28 complied with and performed all of the conditions of the defendant's diversion
29 agreement, except that the defendant owes \$500 or less of the fees required,
30 and the defendant pays the balance of any fees owed before the hearing;

31 (2) may not terminate a diversion agreement for failure to pay

1 restitution if the defendant has otherwise complied with and performed all of the
2 conditions of the diversion agreement.

3 (v) If the court terminates the diversion agreement, the court may take into
4 account any time toward partial fulfillment of the diversion agreement by the
5 defendant at sentencing.

6 (w) After the conclusion of the defendant's diversion period, a defendant who
7 has complied with and satisfied the conditions of the diversion agreement may apply
8 by motion to the court for an order dismissing the charge with prejudice.

9 (x) If a defendant does not file a motion for dismissal within six months after
10 the conclusion of the defendant's diversion period, the court may enter an order
11 dismissing the charge with prejudice if the court finds that the defendant fully
12 complied with and performed the conditions of the diversion agreement. Before a
13 court enters an order dismissing the charge with prejudice, the court shall enter a
14 judgment for any remaining amount of restitution owed by the defendant.

15 (y) If a defendant is an active duty member of the military or is a member of
16 the military, the court shall allow the defendant's appearance by telephone or by other
17 means, if the defendant's military service authorizes the appearance. If the defendant's
18 military service prohibits the defendant's appearance by telephone or other means and
19 prohibits the defendant from aiding and assisting the attorney who would appear on
20 the defendant's behalf, the court shall stay a termination proceeding.

21 (z) Except as prohibited by federal law or regulation, every provider of a
22 screening interview and subsequent treatment programs to which persons are ordered
23 under this section shall supply the judge, prosecutor, defendant, and an agency
24 involved in the defendant's treatment with information and reports concerning the
25 defendant's past and present assessment, treatment, and progress. Information
26 compiled under this subsection is confidential and may only be used in connection
27 with court proceedings involving the defendant's treatment, including use by a court in
28 sentencing a person convicted under this section, or by an officer of the court in
29 preparing a presentence report for the use of the court in sentencing a person convicted
30 under this section. Monitoring of a defendant's progress under a diversion agreement
31 shall be the responsibility of the agency or organization that conducted the screening

1 interview. The agency or organization shall make a report to the court stating the
 2 defendant's successful completion or failure to complete all or any part of the
 3 treatment program specified by the screening interview. The form of the report shall
 4 be determined by agreement between the court and the agency or organization
 5 performing the screening interview. The court shall make the report of the agency or
 6 organization performing the screening interview that is required by this subsection a
 7 part of the record of the case.

8 **Sec. 28.35.099. Definitions for AS 28.35.029 - 28.35.099.** In AS 28.35.029 -
 9 28.35.099,

10 (1) "alcohol safety action program" means a program for alcohol and
 11 substance abuse screening, referral, and monitoring developed and implemented or
 12 approved by the Department of Health under AS 47.37;

13 (2) "controlled substance" has the meaning given in AS 28.33.190;

14 (3) "military" means the armed forces of the United States, the United
 15 States Coast Guard, or the Alaska National Guard.

16 * **Sec. 11.** AS 43.23.140(b) is amended to read:

17 (b) An exemption is not available under this section for permanent fund
 18 dividends taken to satisfy

19 (1) child support obligations required by court order or decision of the
 20 child support services agency under AS 25.27.140 - 25.27.220;

21 (2) court ordered restitution under AS 12.55.045 - 12.55.051,
 22 12.55.100, **AS 28.35.043**, or AS 47.12.120(b)(4);

23 (3) claims on defaulted education loans under AS 43.23.160;

24 (4) court ordered fines;

25 (5) writs of execution under AS 09.35 of a judgment that is entered

26 (A) against a minor in a civil action to recover damages and
 27 court costs;

28 (B) under AS 09.65.255 against the parent, parents, or legal
 29 guardian of an unemancipated minor;

30 (6) a debt owed by an eligible individual to an agency of the state,
 31 including the University of Alaska, unless the debt is contested and an appeal is

1 pending, or the time limit for filing an appeal has not expired;

2 (7) a debt owed to a person for a program for the rehabilitation of
3 perpetrators of domestic violence required under AS 12.55.101, AS 18.66.100(c)(15),
4 AS 25.20.061(3), or AS 33.16.150(f)(2);

5 (8) a judgment for unpaid rent or damage owed to a landlord by an
6 eligible individual that was a tenant of the landlord; in this paragraph, "tenant" has the
7 meaning given in AS 34.03.360;

8 (9) court-ordered forfeiture of an appearance or performance bond
9 under AS 12.30.075.

10 * **Sec. 12.** AS 47.37.210(a) is amended to read:

11 (a) Except as required by AS 28.35.030(d) or 28.35.043(z), the registration
12 and other records of treatment facilities shall remain confidential and are privileged to
13 the patient.

14 * **Sec. 13.** AS 28.35.039 is repealed.

15 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **INDIRECT COURT RULE AMENDMENT.** (a) AS 18.85.100(a), as amended by sec.
18 7 of this Act, has the effect of changing Rule 39, Alaska Rules of Criminal Procedure, by
19 authorizing court-appointed counsel to a defendant who is participating in the driving while
20 under the influence diversion program under AS 28.35.043, enacted by sec. 10 of this Act.

21 (b) AS 28.35.043, enacted by sec. 10 of this Act, has the effect of changing Rule 9,
22 Alaska Rules of Administration, by setting a filing fee amount for participation in the driving
23 while under the influence diversion program.

24 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **APPLICABILITY.** Rule 9, Alaska Rules of Administration, as amended by sec. 14 of
27 this Act, takes effect only if sec. 14 of this Act receives the two-thirds majority vote of each
28 house required by art. IV, sec. 15, Constitution of the State of Alaska.

29 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **TRANSITION: REGULATIONS.** The Department of Administration may adopt

1 regulations necessary to implement the changes made by this Act. The regulations take effect
2 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law
3 implemented by the regulation.

4 * **Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

5 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2024.