

CS FOR SENATE BILL NO. 170(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/5/04

Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to murder in the second degree, the justification of defense of self or
2 others, immunity from prosecution, sentencing, probation, discretionary parole, and the
3 right to representation in certain criminal proceedings; relating to violation of a
4 custodian's duty; relating to sexual abuse of a minor; relating to release of information
5 concerning certain cases involving a minor; relating to local options regarding alcoholic
6 beverages, the offense of furnishing or delivery of alcoholic beverages to a person under
7 21 years of age, and forfeiture of property used in, and money or other items of value
8 used in financial transactions derived from, violation of certain laws relating to alcoholic
9 beverages; relating to assault by means of a dangerous instrument; relating to operating
10 or driving a motor vehicle, aircraft, or watercraft while under the influence of an
11 alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a
12 chemical test, and to the presumptions concerning the chemical analysis of breath or

1 **blood; and providing for an effective date."**

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

3 * **Section 1.** AS 04.11.010(c) is amended to read:

4 (c) **Unless a municipality or established village has adopted a more**
 5 **restrictive local option under AS 04.11.491(g), in** [IN] a criminal prosecution for
 6 possession of alcoholic beverages for sale in violation of (a) of this section, the fact
 7 that a person

8 (1) possessed more than 12 liters of distilled spirits, 24 liters or more
 9 of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic
 10 beverages is restricted or prohibited under AS 04.11.491 creates a presumption that
 11 the person possessed the alcoholic beverages for sale;

12 (2) **sends, transports, or brings more than 12 liters of distilled**
 13 **spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an**
 14 **area where the sale of alcoholic beverages is restricted or prohibited under**
 15 **AS 04.11.491 creates a presumption that the person sent, transported, or brought**
 16 **the alcoholic beverages for sale in the area.**

17 * **Sec. 2.** AS 04.11.010 is amended by adding a new subsection to read:

18 (d) In this section,

19 (1) "bring" has the meaning given in AS 04.11.499;

20 (2) "send" has the meaning given in AS 04.11.499;

21 (3) "transport" has the meaning given in AS 04.11.499.

22 * **Sec. 3.** AS 04.11.150(g) is amended to read:

23 (g) If a shipment is to an area that has restricted the sale of alcoholic
 24 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store
 25 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half
 26 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt
 27 beverages in a calendar month, **or a lower amount of distilled spirits, wine, or malt**
 28 **beverages if the municipality or established village has adopted the lower amount**
 29 **by local option under AS 04.11.491(g).**

30 * **Sec. 4.** AS 04.11.491 is amended by adding a new subsection to read:

1 (g) If a municipality or established village has adopted a local option under
 2 (a)(1), (2), (3), or (4), or (b)(1), (2), or (3) of this section, the municipality or
 3 established village, as part of the local option question or questions placed before the
 4 voters, may

5 (1) adopt an amount of alcoholic beverages that may be imported that
 6 is less than the amounts set out in AS 04.11.150(g);

7 (2) adopt an amount of alcoholic beverages that would give rise to a
 8 presumption that the person possessed the alcoholic beverages for sale; the amounts
 9 adopted under this paragraph may be lower than those set out in AS 04.11.010(c).

10 * **Sec. 5.** AS 04.11.508(b) is amended to read:

11 (b) If the perimeter of an established village determined under (a) of this
 12 section includes any area that is

13 (1) within a municipality

14 (A) that has adopted a local option, the local option adopted
 15 by the municipality applies in the overlapping area;

16 (B) the local option adopted by the established village does
 17 not apply in the overlapping area;

18 (2) within the perimeter of another established village and, if the
 19 other established village has

20 (A) also adopted a local option under AS 04.11.491, the
 21 local option of the established village that is less restrictive applies in the
 22 overlapping area;

23 (B) not adopted a local option under AS 04.11.491, the local
 24 option does not apply in the overlapping area [OR WITHIN THE
 25 PERIMETER OF ANOTHER ESTABLISHED VILLAGE, THE
 26 PERIMETER DESCRIBED UNDER (a) OF THIS SECTION IS LIMITED
 27 TO AN AREA THAT INCLUDES ONLY THE ESTABLISHED VILLAGE].

28 * **Sec. 6.** AS 04.11.508(c) is amended to read:

29 (c) If the board determines that the perimeter of an established village as
 30 provided under (a) and (b) of this section does not accurately reflect the perimeter of
 31 the established village, the board may establish the perimeter of the established village

1 **and the areas of overlapping perimeter described under (b) of this section** for
 2 purposes of applying a local option selected under this chapter.

3 * **Sec. 7.** AS 04.16.051(d) is amended to read:

4 (d) A person acting with criminal negligence who violates this section is guilty
 5 of a class C felony if

6 (1) within the five years preceding the violation, the person has been
 7 previously convicted under

8 (A) this section; or

9 (B) a law or ordinance of this or another jurisdiction with
 10 elements substantially similar to this section; [OR]

11 (2) the person who receives the alcoholic beverage negligently causes
 12 serious physical injury to or the death of another person while under the influence of
 13 the alcoholic beverage received in violation of this section; in this paragraph,

14 (A) "negligently" means acting with civil negligence; and

15 (B) "serious physical injury" has the meaning given in
 16 AS 11.81.900; **or**

17 **(3) the violation occurs within the boundaries of a municipality or**
 18 **the perimeter of an established village that has adopted a local option under**
 19 **AS 04.11.491.**

20 * **Sec. 8.** AS 04.16.220(a) is amended to read:

21 (a) The following are subject to forfeiture:

22 (1) alcoholic beverages manufactured, sold, offered for sale or
 23 possessed for sale, bartered or exchanged for goods and services in this state in
 24 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or
 25 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for
 26 sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages
 27 transported into the state and sold to persons not licensed under this chapter in
 28 violation of AS 04.16.170(b);

29 (2) materials and equipment used in the manufacture, sale, offering for
 30 sale, possession for sale, barter or exchange of alcoholic beverages for goods and
 31 services in this state in violation of AS 04.11.010; materials and equipment used in the

1 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;
 2 materials and equipment used in the sale or offering for sale of an alcoholic beverage
 3 in an area in violation of a local option adopted under AS 04.11.491;

4 (3) aircraft, vehicles, or vessels used to transport, or facilitate the
 5 transportation of

6 (A) alcoholic beverages manufactured, sold, offered for sale or
 7 possessed for sale, bartered or exchanged for goods and services in this state in
 8 violation of AS 04.11.010;

9 (B) property stocked, warehoused, or otherwise stored in
 10 violation of AS 04.21.060;

11 (C) alcoholic beverages imported into a municipality or
 12 established village in violation of AS 04.11.499;

13 (4) alcoholic beverages found on licensed premises that do not bear
 14 federal excise stamps if excise stamps are required under federal law;

15 (5) alcoholic beverages, materials or equipment used in violation of
 16 AS 04.16.175;

17 **(6) money, securities, negotiable instruments, or other things of**
 18 **value used in financial transactions derived from activity prohibited under**
 19 **AS 04.11.010 or in violation of a local option adopted under AS 04.11.491.**

20 * **Sec. 9.** AS 04.16.220(e) is amended to read:

21 (e) The owner of property subject to forfeiture under (a) **or (i)** of this section
 22 is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in
 23 an action under (d) of this section, the owner shows that the owner

24 **(1) was not a party to the violation;**

25 **(2) [AND] had no actual knowledge or reasonable cause to believe**
 26 **that the property was used or was to be used in violation of the law; and**

27 **(3) had no actual knowledge or reasonable cause to believe that the**
 28 **person committing the violation had**

29 **(A) a criminal record for violating this title; or**

30 **(B) committed other violations of this title.**

31 * **Sec. 10.** AS 04.16.220(f) is amended to read:

1 (f) A person other than the owner holding, or the assignee of, a lien, mortgage,
 2 conditional sales contract on, or the right to possession to property subject to forfeiture
 3 under (a) **or (i)** of this section is entitled to relief from the forfeiture in the nature of
 4 remission of the forfeiture if, in an action under (d) of this section, the person shows
 5 that the person

6 **(1)** was not a party to the violation subjecting the property to
 7 forfeiture;

8 **(2)** [AND] had no actual knowledge **or reasonable cause to believe**
 9 that the property was [USED OR WAS] to be used in violation of the law; **and**

10 **(3) had no actual knowledge or reasonable cause to believe that the**
 11 **person committing the violation had**

12 **(A) a criminal record for violating this title; or**

13 **(B) committed other violations of this title.**

14 * **Sec. 11.** AS 04.16.220 is amended by adding new subsections to read:

15 (i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an
 16 aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court
 17 shall, subject to remission to innocent parties under this section,

18 (1) order the forfeiture of an aircraft to the state;

19 (2) order the forfeiture of a vehicle or watercraft if

20 (A) the defendant has a prior felony conviction for a violation
 21 of AS 11.41 or a similar law in another jurisdiction;

22 (B) the defendant is on felony probation or parole;

23 (C) the defendant has a prior conviction for violating
 24 AS 04.11.010 or 04.11.499; or

25 (D) the quantity of alcohol transported in violation of this title
 26 was twice the presumptive amounts in AS 04.11.010(c).

27 (j) Notwithstanding (i) of this section, a court is not required to order the
 28 forfeiture of a vehicle or watercraft if the court determines that

29 (1) the vehicle or watercraft is the sole means of transportation for a
 30 family residing in a village;

31 (2) the court may impose conditions that will prevent the defendant's

1 use of the vehicle or watercraft; and

2 (3) either

3 (A) a member of the family would be entitled to remission
4 under this section if the family member were an owner of or held a security
5 interest in the vehicle or watercraft; or

6 (B) if a member of the family would not be entitled to
7 remission, the family member was unable as a practical matter to stop the
8 violation making the vehicle or watercraft subject to forfeiture.

9 (k) When forfeiting property under (a), (d), or (i) of this section, a court may
10 award to a municipal law enforcement agency that participated in the arrest or
11 conviction of the defendant, the seizure of property, or the identification of property
12 for seizure, (1) the property if the property is worth \$5,000 or less and is not money or
13 some other thing that is divisible, or (2) up to 75 percent of the property or the value of
14 the property if the property is worth more than \$5,000 or is money or some other thing
15 that is divisible. In determining the percentage a municipal law enforcement agency
16 may receive under this subsection, the court shall consider the municipal law
17 enforcement agency's total involvement in the case relative to the involvement of the
18 state.

19 (l) In this section, "village" means a community of fewer than 1,000 persons
20 located off the interconnected state road system.

21 * **Sec. 12.** AS 09.50.020(a) is amended to read:

22 (a) A person who is guilty of contempt is punishable by a fine of not more
23 than \$300 or by imprisonment for not more than six months. However, when the
24 contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a
25 magistrate, the person is punishable by a fine of not more than \$100 unless it appears
26 that a right or remedy of a party to an action or proceeding was defeated or prejudiced
27 by the contempt, in which case the penalty shall be as prescribed for contempts
28 described in AS 09.50.010(1) and [,] (2) [, AND (13)].

29 * **Sec. 13.** AS 11.41.110(a) is amended to read:

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

31 (1) with intent to cause serious physical injury to another person or

1 knowing that the conduct is substantially certain to cause death or serious physical
2 injury to another person, the person causes the death of any person;

3 (2) the person knowingly engages in conduct that results in the death
4 of another person under circumstances manifesting an extreme indifference to the
5 value of human life;

6 (3) under circumstances not amounting to murder in the first degree
7 under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the
8 person commits or attempts to commit arson in the first degree, kidnapping, sexual
9 assault in the first degree, sexual assault in the second degree, sexual abuse of a minor
10 in the first degree, sexual abuse of a minor in the second degree, burglary in the first
11 degree, escape in the first or second degree, robbery in any degree, or misconduct
12 involving a controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1)
13 or (2), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or
14 in immediate flight from that crime, any person causes the death of a person [OTHER
15 THAN ONE OF THE PARTICIPANTS];

16 (4) acting with a criminal street gang, the person commits or attempts
17 to commit a crime that is a felony and, in the course of or in furtherance of that crime
18 or in immediate flight from that crime, any person causes the death of a person
19 [OTHER THAN ONE OF THE PARTICIPANTS]; or

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

23 (A) a felony violation of AS 11.41;

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

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

28 * **Sec. 14.** AS 11.41.220(a) is amended to read:

29 (a) A person commits the crime of assault in the third degree if that person

30 (1) recklessly

31 (A) places another person in fear of imminent serious physical

1 injury by means of a dangerous instrument;

2 (B) causes physical injury to another person by means of a
3 dangerous instrument; or

4 (C) while being 18 years of age or older

5 (i) causes physical injury to a child under 10 years of
6 age and the injury reasonably requires medical treatment;

7 (ii) causes physical injury to a child under 10 years of
8 age on more than one occasion;

9 (2) with intent to place another person in fear of death or serious
10 physical injury to the person or the person's family member makes repeated threats to
11 cause death or serious physical injury to another person; [OR]

12 (3) while being 18 years of age or older, knowingly causes physical
13 injury to a child under 16 years of age but at least 10 years of age and the injury
14 reasonably requires medical treatment; **or**

15 **(4) with criminal negligence causes serious physical injury to**
16 **another person by means of a dangerous instrument.**

17 * **Sec. 15.** AS 11.41.438(a) is amended to read:

18 (a) An offender commits the crime of sexual abuse of a minor in the third
19 degree if

20 (1) **being under 16 years of age, the offender engages in sexual**
21 **penetration with a person who is under 13 years of age and at least three years**
22 **younger than the offender;**

23 **(2)** being 16 years of age or older, the offender engages in sexual
24 contact with a person who is 13, 14, or 15 years of age and at least three years younger
25 than the offender; or

26 **(3)** [(2)] being 18 years of age or older, the offender engages in sexual
27 penetration with a person who is 16 or 17 years of age and at least three years younger
28 than the offender, and the offender occupies a position of authority in relation to the
29 victim.

30 * **Sec. 16.** AS 11.41.440(a) is amended to read:

31 (a) An offender commits the crime of sexual abuse of a minor in the fourth

1 degree if

2 (1) being under 16 years of age, the offender engages in [SEXUAL
3 PENETRATION OR] sexual contact with a person who is under 13 years of age and
4 at least three years younger than the offender; or

5 (2) being 18 years of age or older, the offender engages in sexual
6 contact with a person who is 16 or 17 years of age and at least three years younger
7 than the offender, and the offender occupies a position of authority in relation to the
8 victim.

9 * **Sec. 17.** AS 11.56 is amended by adding a new section to read:

10 **Sec. 11.56.758. Violation of custodian's duty.** (a) A person commits the
11 crime of violation of custodian's duty if the person knowingly fails, when acting as a
12 custodian appointed by the court for a released person under AS 12.30, to report
13 immediately as directed by the court that the person released has violated a condition
14 of release.

15 (b) Violation of custodian's duty is

16 (1) a class A misdemeanor if the released person is charged with a
17 felony;

18 (2) a class B misdemeanor if the released person is charged with a
19 misdemeanor.

20 * **Sec. 18.** AS 11.81.330(a) is amended to read:

21 (a) A person may use nondeadly force upon another when and to the extent the
22 person reasonably believes it is necessary for self defense against what the person
23 reasonably believes to be the use of unlawful force by the other, unless

24 (1) the force involved was the product of mutual combat not
25 authorized by law;

26 (2) the person claiming the defense of justification provoked the
27 other's conduct with intent to cause physical injury to the other; [OR]

28 (3) the person claiming the defense of justification was the initial
29 aggressor; **or**

30 **(4) the force applied was the result of using a deadly weapon the**
31 **person claiming the defense of justification possessed while**

1 **(A) acting alone or with others to further a felony criminal**
 2 **objective of the person or one or more other persons; or**

3 **(B) a participant in a felony transaction or purported**
 4 **transaction or in immediate flight from a felony transaction or purported**
 5 **transaction in violation of AS 11.71.**

6 * **Sec. 19.** AS 12.50.101(a) is amended to read:

7 (a) If a witness refuses, on the basis of the privilege against self-incrimination,
 8 to testify or provide other information in a criminal proceeding before or ancillary to a
 9 court or grand jury of this state, and a judge issues an order under (b) of this section,
 10 the witness may not refuse to comply with the order on the basis of the privilege
 11 against self-incrimination. If the witness fully complies with the order, **the witness**
 12 **may not be prosecuted for an offense about which the witness is compelled to**
 13 **testify** [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER
 14 THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED
 15 FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED
 16 AGAINST THE WITNESS IN A CRIMINAL CASE], except in a prosecution based
 17 on perjury, giving a false statement [,] or otherwise knowingly providing false
 18 information, or hindering prosecution.

19 * **Sec. 20.** AS 12.50.101(e) is amended to read:

20 (e) **In** [AS USED IN] this section,

21 **(1)** "other information" means books, papers, documents, records,
 22 recordings, or other similar material;

23 **(2)** "**proffer**" means a written or oral statement by the attorney for
 24 **the witness, stating the attorney's good faith belief of the substance of the**
 25 **witness's testimony or other information.**

26 * **Sec. 21.** AS 12.50.101 is amended by adding new subsections to read:

27 (f) If a witness refuses, or there is reason to believe the witness will refuse, to
 28 testify or provide other information based on the privilege against self-incrimination,
 29 and if the attorney general or the attorney general's designee has not applied for an
 30 order under (b) of this section, the court shall inform the witness of the right to be
 31 represented by an attorney, and that an attorney will be appointed for the witness if the

1 witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to
2 allow the witness to consult with the attorney for the witness.

3 (g) If the attorney general or the attorney general's designee declines to seek
4 an order under (b) of this section after the witness has had an opportunity to consult
5 with an attorney, and the witness continues to refuse to testify or provide other
6 information, the court shall hold a hearing to determine the validity of the claim of
7 privilege by the witness. The hearing shall be in camera.

8 (h) At the hearing under (g) of this section, the attorney for the witness, in the
9 form of a proffer, shall describe the testimony or other information that the witness
10 claims is privileged. The proffer must include a description of how the testimony or
11 other information could connect the witness with a crime. The proffer is privileged
12 and inadmissible for any other purpose. If the proffer establishes a factual basis that
13 there is a real or substantial danger that the testimony or other information to be
14 compelled would support a conviction or would furnish a link in the chain of evidence
15 leading to conviction for a crime, the court may find that the witness has a valid claim
16 of privilege.

17 (i) If the court finds that the witness has a valid claim of privilege, it shall
18 advise the prosecution of that finding.

19 * **Sec. 22.** AS 12.55.025(c) is amended to read:

20 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is
21 sentenced to imprisonment, the term of confinement commences on the date of
22 imposition of sentence unless the court specifically provides that the defendant must
23 report to serve the sentence on another date. If the court provides another date to
24 begin the term of confinement, the court shall provide the defendant with written
25 notice of the date, time, and location of the correctional facility to which the defendant
26 must report. A defendant shall receive credit for time spent in custody pending trial,
27 sentencing, or appeal, if the detention was in connection with the offense for which
28 sentence was imposed. A defendant may not receive credit for more than the actual
29 time spent in custody pending trial, sentencing, or appeal. The time during which a
30 defendant is voluntarily absent from official detention after the defendant has been
31 sentenced may not be credited toward service of the sentence.

1 * **Sec. 23.** AS 12.55 is amended by adding a new section to read:

2 **Sec. 12.55.127. Consecutive and concurrent terms of imprisonment.** (a) If
3 a defendant is required to serve a term of imprisonment under a separate judgment, a
4 term of imprisonment imposed in a later judgment, amended judgment, or probation
5 revocation shall be consecutive.

6 (b) Except as provided in (c) of this section, if a defendant is being sentenced
7 for two or more crimes in a single judgment, terms of imprisonment may be
8 concurrent or partially concurrent.

9 (c) If the defendant is being sentenced for

10 (1) escape, the term of imprisonment shall be consecutive to the term
11 for the underlying crime;

12 (2) two or more crimes under AS 11.41, a consecutive term of
13 imprisonment shall be imposed for at least

14 (A) the mandatory minimum term under AS 12.55.125(a) for
15 each additional crime that is murder in the first degree;

16 (B) the mandatory minimum term for each additional crime
17 that is an unclassified felony governed by AS 12.55.125(b);

18 (C) the presumptive term specified in AS 12.55.125(c) or the
19 active term of imprisonment, whichever is less, for each additional crime that
20 is

21 (i) manslaughter; or

22 (ii) kidnapping that is a class A felony;

23 (D) two years or the active term of imprisonment, whichever is
24 less, for each additional crime that is criminally negligent homicide;

25 (E) one-fourth of the presumptive term under AS 12.55.125(c)
26 or (i) for each additional crime that is sexual assault in the first degree under
27 AS 11.41.410 or sexual abuse of a minor in the first degree under
28 AS 11.41.434, or an attempt, solicitation or conspiracy to commit those
29 offenses; and

30 (F) some additional term of imprisonment for each additional
31 crime, or each additional attempt or solicitation to commit the offense, under

1 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or
2 11.41.500 - 11.41.520.

3 (d) In this section,

4 (1) "active term of imprisonment" means the total term of
5 imprisonment imposed for a crime, minus suspended imprisonment;

6 (2) "additional crime" means a crime that is not the primary crime;

7 (3) "primary crime" means the crime

8 (A) for which the sentencing court imposes the longest active
9 term of imprisonment; or

10 (B) that is designated by the sentencing court as the primary
11 crime when no single crime has the longest active term of imprisonment.

12 * **Sec. 24.** AS 18.85.100 is amended by adding a new subsection to read:

13 (f) Notwithstanding (a) of this section, an indigent person is entitled to the
14 representation and necessary services and facilities of representation as provided in (a)
15 of this section when the person is a witness who refuses or there is reason to believe
16 will refuse to testify or provide other information based on the privilege against self-
17 incrimination.

18 * **Sec. 25.** AS 28.35.030(a) is amended to read:

19 (a) A person commits the crime of driving while under the influence of an
20 alcoholic beverage, inhalant, or controlled substance if the person operates or drives a
21 motor vehicle or operates an aircraft or a watercraft

22 (1) while under the influence of an alcoholic beverage, intoxicating
23 liquor, inhalant, or any controlled substance;

24 (2) if [WHEN], as determined by a chemical test taken within four
25 hours after the alleged offense was committed, there is 0.08 percent or more by weight
26 of alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters
27 of blood, or if [WHEN] there is 0.08 grams or more of alcohol per 210 liters of the
28 person's breath; or

29 (3) while the person is under the combined influence of an alcoholic
30 beverage, an intoxicating liquor, an inhalant, or [AND] a controlled substance.

31 * **Sec. 26.** AS 28.35.030(n) is amended to read:

1 (n) A person is guilty of a class C felony if the person is convicted under (a) of
 2 this section and **either** has been previously convicted two or more times since
 3 January 1, 1996, and within the 10 years preceding the date of the present offense, **or**
 4 **punishment under this subsection or under AS 28.35.032(p) was previously**
 5 **imposed on the person.** For purposes of determining minimum sentences based on
 6 previous convictions, the provisions of (r)(4) of this section apply. Upon conviction,
 7 the court

8 (1) shall impose a fine of not less than \$10,000 and a minimum
 9 sentence of imprisonment of not less than

10 (A) 120 days if the person has been previously convicted twice;

11 (B) 240 days if the person has been previously convicted three
 12 times;

13 (C) 360 days if the person has been previously convicted four
 14 or more times;

15 (2) may not

16 (A) suspend execution of sentence or grant probation except on
 17 condition that the person serve the minimum imprisonment under (1) of this
 18 subsection; or

19 (B) suspend imposition of sentence;

20 (3) shall permanently revoke the person's driver's license, privilege to
 21 drive, or privilege to obtain a license subject to restoration of the license under (o) of
 22 this section;

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

28 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,
 29 or aircraft used in the commission of the offense, subject to remission under
 30 AS 28.35.037; and

31 (6) shall order the department to revoke the registration for any vehicle

1 registered by the department in the name of the person convicted under this
 2 subsection; if a person convicted under this subsection is a registered co-owner of a
 3 vehicle or is registered as a co-owner under a business name, the department shall
 4 reissue the vehicle registration and omit the name of the person convicted under this
 5 subsection.

6 * **Sec. 27.** AS 28.35.030 is amended by adding a new subsection to read:

7 (s) In a prosecution under (a) of this section, a person may introduce evidence
 8 of having consumed alcohol before operating or driving the motor vehicle, aircraft, or
 9 watercraft to rebut or explain the results of a chemical test, but it is not a defense that
 10 the chemical test did not measure the blood alcohol at the time of the driving or
 11 operating.

12 * **Sec. 28.** AS 28.35.032(p) is amended to read:

13 (p) A person is guilty of a class C felony if the person is convicted under this
 14 section and **either** has been previously convicted two or more times since January 1,
 15 1996, and within the 10 years preceding the date of the present offense, **or**
 16 **punishment under this subsection or under AS 28.35.030(n) was previously**
 17 **imposed on the person.** For purposes of determining minimum sentences based on
 18 previous convictions, the provisions of AS 28.35.030(r)(4) apply. Upon conviction,

19 (1) the court shall impose a fine of not less than \$10,000 and a
 20 minimum sentence of imprisonment of not less than

21 (A) 120 days if the person has been previously convicted twice;

22 (B) 240 days if the person has been previously convicted three
 23 times;

24 (C) 360 days if the person has been previously convicted four
 25 or more times;

26 (2) the court may not

27 (A) suspend execution of the sentence required by (1) of this
 28 subsection or grant probation, except on condition that the person serve the
 29 minimum imprisonment under (1) of this subsection; or

30 (B) suspend imposition of sentence;

31 (3) the court shall permanently revoke the person's driver's license,

1 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
2 this section;

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

8 (5) the sentence imposed by the court under this subsection shall run
9 consecutively with any other sentence of imprisonment imposed on the person;

10 (6) the court shall order forfeiture under AS 28.35.036, of the motor
11 vehicle, aircraft, or watercraft used in the commission of the offense, subject to
12 remission under AS 28.35.037; and

13 (7) the court shall order the department to revoke the registration for
14 any vehicle registered by the department in the name of the person convicted under
15 this subsection; if a person convicted under this subsection is a registered co-owner of
16 a vehicle, the department shall reissue the vehicle registration and omit the name of
17 the person convicted under this subsection.

18 * **Sec. 29.** AS 28.35.033(c) is amended to read:

19 (c) **Except as provided in AS 28.35.030(s), the** [THE] provisions of (a) of
20 this section may not be construed to limit the introduction of any other competent
21 evidence bearing upon the question of whether the person was or was not under the
22 influence of intoxicating liquor.

23 * **Sec. 30.** AS 33.16.090(b) is amended to read:

24 (b) Except as provided in (e) of this section, a prisoner is not eligible for
25 discretionary parole during the term of a presumptive sentence; however, a prisoner is
26 eligible for discretionary parole during a term of sentence enhancement imposed under
27 AS 12.55.155(a) or during the term of a consecutive or partially consecutive
28 presumptive sentence imposed under **AS 12.55.127** [AS 12.55.025(e) OR (g)]. A
29 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite
30 term under AS 12.55.125(l) is not eligible for discretionary parole during the entire
31 term.

1 * **Sec. 31.** AS 33.16.090(c) is amended to read:

2 (c) Except as provided in (e) of this section, a prisoner eligible for
3 discretionary parole during a period of sentence enhancement imposed under
4 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence
5 imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)] shall serve the unenhanced
6 portion of the sentence or the initial presumptive sentence before being otherwise
7 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this
8 subsection, the sentence for the most serious offense in the case of consecutive or
9 partially consecutive presumptive sentences shall be considered the initial presumptive
10 sentence. The unenhanced sentence or the initial presumptive sentence is considered
11 served for purposes of discretionary parole on the date the unenhanced or initial
12 presumptive sentence is due to expire less good time earned under AS 33.20.010.

13 * **Sec. 32.** AS 47.12.310 is amended by adding a new subsection to read:

14 (k) A state or municipal agency, other than a state or municipal law
15 enforcement agency, or authorized employee may disclose to the public information
16 regarding a case as may be necessary to protect the safety of the public provided the
17 disclosure is authorized by regulations adopted by the department.

18 * **Sec. 33.** (a) AS 09.50.010(13) is repealed.

19 (b) AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

20 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **APPLICABILITY.** (a) The changes made in secs. 7 - 11, 13 - 16, 18, 22, 23, 25, 30,
23 31, and 33(b) of this Act apply to offenses committed on or after the respective effective date
24 of those sections.

25 (b) Sections 26 and 28 of this Act apply to offenses occurring on or after the effective
26 date of those sections, except that previous punishment, referred to in AS 28.35.030(n), as
27 amended by sec. 26 of this Act, and in AS 28.35.032(p), as amended by sec. 28 of this Act,
28 includes punishment imposed before, on, or after the effective date of secs. 26 and 28 of this
29 Act.

30 (c) Section 17 of this Act applies to custodians who fail to report on or after the
31 effective date of sec. 17 of this Act, for persons released for offenses committed before, on, or

1 after the effective date of sec. 17 of this Act.

2 (d) The changes made in secs. 19, 21, 24, 27, and 29 of this Act apply to criminal
3 proceedings for offenses committed before, on, or after the effective date of those sections.

4 (e) Section 32 of this Act applies to an offense occurring before, on, or after the
5 effective date of this Act.

6 * **Sec. 35.** This Act takes effect July 1, 2004.