

HOUSE BILL NO. 441

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE ROKEBERG

Introduced: 2/10/06

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to operating or driving a motor vehicle, aircraft, or watercraft while**
2 **under the influence; relating to mitigating factors in sentencing; amending Rule 35,**
3 **Alaska Rules of Criminal Procedure; and providing for an effective date."**

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

5 *** Section 1.** AS 28.15.201(d) is amended to read:

6 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
7 a license under AS 28.15.181(c), or the department when revoking a driver's license,
8 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
9 limited license privileges if

10 (1) the revocation was for a misdemeanor conviction under
11 AS 28.35.030(a) and not for a violation of AS 28.35.032;

12 (2) the person has

13 (A) not been previously convicted and the limited license is not
14 granted during the first 30 days of the period of revocation;

1 (B) been previously convicted, the limited license is not
2 granted during the first 90 days of the period of revocation, and

3 (i) the person has successfully completed a court-
4 ordered treatment program under AS 28.35.028 or former
5 AS 28.35.030(p); or

6 (ii) the court or department requires the person to use an
7 ignition interlock device during the period of the limited license;

8 (3) the court or the department determines that

9 (A) the person's ability to earn a livelihood would be severely
10 impaired without a limited license; or

11 (B) the person has successfully completed a court-ordered
12 treatment program described under AS 28.35.028 or former AS 28.35.030(p)
13 and the person's ability to earn a livelihood, attend school, or provide for
14 family health would be severely impaired without a limited license;

15 (4) the court or the department determines that a limitation under (a) of
16 this section can be placed on the license that will enable the person to earn a livelihood
17 without excessive danger to the public;

18 (5) the court or the department determines that the person is enrolled in
19 and is in compliance with or has successfully completed the alcoholism screening,
20 evaluation, referral, and program requirements of the Department of Health and Social
21 Services under AS 28.35.030(h); and

22 (6) the person has not been previously convicted under
23 AS 28.15.291(a)(2), AS 28.35.030, or 28.35.032 while driving or operating a vehicle,
24 aircraft, or watercraft under a limited license issued under this section.

25 * **Sec. 2.** AS 28.35 is amended by adding a new section to article 2 to read:

26 **Sec. 28.35.028. Court-ordered treatment for persons charged with a**
27 **violation of AS 28.35.030 or 28.35.032.** (a) Notwithstanding another provision of
28 law, with the consent of the state and the defendant, the court may elect to proceed in a
29 criminal case under AS 28.35.030 or 28.35.032, including the case of a defendant
30 charged with violating the terms of probation, under the procedure provided in this
31 section and order the defendant to complete a court-ordered treatment program. The

1 state may not consent to a referral under this subsection unless the state has consulted
2 with the victim and explained the process and consequences of the referral to the
3 victim.

4 (b) Once the court elects to proceed under this section, the defendant shall
5 enter a no contest or guilty plea to the offense or shall admit to a probation violation,
6 as appropriate. The state and the defendant may enter into a plea agreement to
7 determine the offense or offenses to which the defendant is required to plead. If the
8 court accepts the agreement, the court shall enforce the terms of the agreement. The
9 court shall enter a judgment of conviction for the offense or offenses for which the
10 defendant has pleaded or an order finding that the defendant has violated probation, as
11 appropriate. A judgment of conviction or an order finding a probation violation must
12 set a schedule for payment of restitution owed by the defendant. In a judgment of
13 conviction and on probation conditions that the court considers appropriate, the court
14 may withhold pronouncement of a period of imprisonment or a fine to provide an
15 incentive for the defendant to complete recommended treatment successfully.
16 Imprisonment or a fine imposed by a court shall comply with AS 12.55 or any
17 mandatory minimum or other sentencing provision applicable to the offense.
18 However, notwithstanding Rule 35, Alaska Rules of Criminal Procedure, and any
19 other provision of law, the court, at any time after the period when a reduction of
20 sentence is normally available, may consider and reduce the defendant's sentence
21 based on the defendant's compliance with the treatment plan; when reducing a
22 sentence, the court (1) may not reduce the sentence below the mandatory minimum
23 sentence for the offense unless the court finds that the defendant has successfully
24 complied with and completed the treatment plan and that treatment plan approximated
25 the severity of the minimum period of imprisonment, and (2) may consider the
26 defendant's compliance with the treatment plan as a mitigating factor allowing a
27 reduction of a sentence under AS 12.55.155(a). A court entering an order finding the
28 defendant has violated probation may withhold pronouncement of disposition to
29 provide an incentive for the defendant to complete the recommended treatment
30 successfully.

31 (c) If the defendant does not successfully complete the treatment plan imposed

1 by the court under this section, the defendant's no contest or guilty plea or admission
2 to a probation violation to the court shall stand, and the sentence previously imposed
3 shall be executed or, if sentence has not yet been imposed, sentence shall be imposed
4 by the court.

5 (d) Notwithstanding any other provision of law to the contrary, the judge, the
6 state, the defendant, and the agencies involved in the defendant's treatment plan are
7 entitled to information and reports bearing on the defendant's assessment, treatment,
8 and progress. The victim is entitled to periodic reports on the defendant's progress and
9 participation.

10 (e) In addition to other conditions authorized under AS 12.30 or AS 12.55, a
11 court may impose the following conditions of bail or probation:

12 (1) require the defendant to submit to electronic monitoring if the
13 commissioner of corrections agrees to this condition;

14 (2) require the defendant to submit to house arrest.

15 (f) A defendant who is subject to a condition set out in (e) of this section is not
16 entitled to credit for time served.

17 (g) In addition to other conditions authorized under AS 12.30, a court may
18 require the defendant to take a drug or combination of drugs intended to prevent the
19 consumption of alcoholic beverages.

20 (h) The Department of Health and Social Services may require treatment
21 providers to make advances to a defendant accepted to the court to cover the initial
22 costs related to the use of Naltrexone if the defendant is otherwise without resources to
23 pay those costs. The court shall require as a condition of probation that the defendant
24 repay the treatment provider.

25 (i) In this section,

26 (1) "court-ordered treatment program" or "treatment plan" means a
27 treatment program for a person who consumes alcohol or drugs and that

28 (A) requires participation for at least 18 consecutive months;

29 (B) includes planning and treatment for alcohol or drug
30 addiction;

31 (C) includes emphasis on personal responsibility;

1 (D) provides in-court recognition of progress and sanctions for
2 relapses;

3 (E) requires payment of restitution to victims and completion
4 of community work service;

5 (F) includes physician approved treatment of physical addiction
6 and treatment of the psychological causes of addiction;

7 (G) includes a monitoring program and physical placement or
8 housing; and

9 (H) requires adherence to conditions of probation;

10 (2) "sentence" or "sentencing" includes a suspended imposition of
11 sentence as authorized under AS 12.55.085.

12 * **Sec. 3.** AS 28.35.030(b) is amended to read:

13 (b) Except as provided under (n) of this section, driving while under the
14 influence of an alcoholic beverage, inhalant, or controlled substance is a class A
15 misdemeanor. **Upon** [EXCEPT AS PROVIDED UNDER (p) OF THIS SECTION,
16 UPON] conviction,

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

18 (A) not less than 72 consecutive hours and a fine of not less
19 than \$1,500 if the person has not been previously convicted;

20 (B) not less than 20 days and a fine of not less than \$3,000 if
21 the person has been previously convicted once;

22 (C) not less than 60 days and a fine of not less than \$4,000 if
23 the person has been previously convicted twice and is not subject to
24 punishment under (n) of this section;

25 (D) not less than 120 days and a fine of not less than \$5,000 if
26 the person has been previously convicted three times and is not subject to
27 punishment under (n) of this section;

28 (E) not less than 240 days and a fine of not less than \$6,000 if
29 the person has been previously convicted four times and is not subject to
30 punishment under (n) of this section;

31 (F) not less than 360 days and a fine of not less than \$7,000 if

1 the person has been previously convicted more than four times and is not
2 subject to punishment under (n) of this section;

3 (2) the court may not

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

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

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

10 (B) suspend imposition of sentence;

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

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

20 * **Sec. 4.** AS 28.35.032(g) is amended to read:

21 (g) Upon [EXCEPT AS PROVIDED UNDER (r) OF THIS SECTION,
22 UPON] conviction under this section,

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

24 (A) not less than 72 consecutive hours and a fine of not less
25 than \$1,500 if the person has not been previously convicted;

26 (B) not less than 20 days and a fine of not less than \$3,000 if
27 the person has been previously convicted once;

28 (C) not less than 60 days and a fine of not less than \$4,000 if
29 the person has been previously convicted twice and is not subject to
30 punishment under (p) of this section;

31 (D) not less than 120 days and a fine of not less than \$5,000 if

1 the person has been previously convicted three times and is not subject to
2 punishment under (p) of this section;

3 (E) not less than 240 days and a fine of not less than \$6,000 if
4 the person has been previously convicted four times and is not subject to
5 punishment under (p) of this section;

6 (F) not less than 360 days and a fine of not less than \$7,000 if
7 the person has been previously convicted more than four times and is not
8 subject to punishment under (p) of this section;

9 (2) the court may not

10 (A) suspend execution of the sentence required by (1) of this
11 subsection or grant probation, except on condition that the person

12 (i) serve the minimum imprisonment under (1) of this
13 subsection; and

14 (ii) pay the minimum fine required under (1) of this
15 subsection; or

16 (B) suspend imposition of sentence;

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

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

26 (5) the sentence imposed by the court under this subsection shall run
27 consecutively with any other sentence of imprisonment imposed on the person.

28 * **Sec. 5.** AS 12.55.155(d)(17); AS 28.35.030(p), and 28.35.032(r) are repealed.

29 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **INDIRECT COURT RULE AMENDMENT.** AS 28.35.028(b), added by sec. 2 of this

1 Act, has the effect of amending Rule 35, Alaska Rules of Criminal Procedure, by allowing a
2 court to consider and reduce a criminal sentence outside of the time periods currently
3 provided by that rule.

4 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION. Notwithstanding sec. 5 of this Act, defendants participating in a court-
7 ordered treatment program under AS 28.35.030(p) or 28.35.032(r) or the therapeutic court
8 pilot program created by ch. 64, SLA 2001, as amended by ch. 109, SLA 2004, on the
9 effective date of this Act, shall continue in their respective programs under the terms of that
10 program until the individual program is completed.

11 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).