

SENATE CS FOR CS FOR HOUSE BILL NO. 441(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/12/06

Referred: Finance

Sponsor(s): REPRESENTATIVES ROKEBERG, McGuire, Kelly, Gardner, LeDoux, Crawford

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to criminal sentencing; relating to operating or driving a motor**
2 **vehicle, aircraft, or watercraft while under the influence; relating to court-ordered**
3 **treatment programs for certain offenders and offenses; amending Rule 35, Alaska Rules**
4 **of Criminal Procedure; and providing for an effective date."**

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

6 * **Section 1.** AS 12.55.155(d)(17) is amended to read:

7 (17) except in the case of an offense defined by AS 11.41 or
8 AS 11.46.400, the [OR A] defendant [WHO] has [PREVIOUSLY] been convicted of
9 a class B or C felony, and [THE DEFENDANT], at the time of sentencing, [IS
10 ACTIVELY PARTICIPATING IN OR] has successfully completed a court-ordered
11 [STATE-APPROVED] treatment program that [IS RELEVANT TO THE OFFENSE
12 AND THAT] was begun after the offense was committed;

13 * **Sec. 2.** AS 28.15.201(d) is amended to read:

14 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain

1 a license under AS 28.15.181(c), or the department when revoking a driver's license,
2 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
3 limited license privileges if

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

6 (2) the person has

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

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

11 (i) the person has successfully completed a court-
12 ordered treatment program under AS 28.35.028 or former
13 AS 28.35.030(p); or

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

16 (3) the court or the department determines that

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

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

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

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

30 (6) the person has not been previously convicted under
31 AS 28.15.291(a)(2), AS 28.35.030, or 28.35.032 while driving or operating a vehicle,

1 aircraft, or watercraft under a limited license issued under this section.

2 * **Sec. 3.** AS 28.35 is amended by adding a new section to article 2 to read:

3 **Sec. 28.35.028. Court-ordered treatment for persons charged with a**
4 **violation of AS 28.35.030 or 28.35.032.** (a) Notwithstanding another provision of
5 law, with the consent of the state and the defendant, the court may elect to proceed in a
6 criminal case under AS 28.35.030 or 28.35.032, including the case of a defendant
7 charged with violating the terms of probation, under the procedure provided in this
8 section and order the defendant to complete a court-ordered treatment program. The
9 state may not consent to a referral under this subsection unless the state has consulted
10 with the victim and explained the process and consequences of the referral to the
11 victim. A court may not elect to proceed under this section if the defendant has
12 previously participated in a court-ordered treatment program under this section two or
13 more times.

14 (b) Once the court elects to proceed under this section, the defendant shall
15 enter a no contest or guilty plea to the offense or shall admit to a probation violation,
16 as appropriate. The state and the defendant may enter into a plea agreement to
17 determine the offense or offenses to which the defendant is required to plead. If the
18 court accepts the agreement, the court shall enforce the terms of the agreement. The
19 court shall enter a judgment of conviction for the offense or offenses for which the
20 defendant has pleaded or an order finding that the defendant has violated probation, as
21 appropriate. A judgment of conviction or an order finding a probation violation must
22 set a schedule for payment of restitution owed by the defendant. In a judgment of
23 conviction and on probation conditions that the court considers appropriate, the court
24 may withhold pronouncement of a period of imprisonment or a fine to provide an
25 incentive for the defendant to complete recommended treatment successfully.
26 Imprisonment or a fine imposed by a court shall comply with AS 12.55 or any
27 mandatory minimum or other sentencing provision applicable to the offense.
28 However, notwithstanding Rule 35, Alaska Rules of Criminal Procedure, and any
29 other provision of law, the court, at any time after the period when a reduction of
30 sentence is normally available, may consider and reduce the defendant's sentence
31 based on the defendant's compliance with the treatment plan; when reducing a

1 sentence, the court (1) may not reduce the sentence below the mandatory minimum
2 sentence for the offense unless the court finds that the defendant has successfully
3 complied with and completed the treatment plan and that treatment plan approximated
4 the severity of the minimum period of imprisonment, and (2) may consider the
5 defendant's compliance with the treatment plan as a mitigating factor allowing a
6 reduction of a sentence under AS 12.55.155(a). A court entering an order finding the
7 defendant has violated probation may withhold pronouncement of disposition to
8 provide an incentive for the defendant to complete the recommended treatment
9 successfully.

10 (c) If the defendant does not successfully complete the treatment plan imposed
11 by the court under this section, the defendant's no contest or guilty plea or admission
12 to a probation violation to the court shall stand, and the sentence previously imposed
13 shall be executed or, if sentence has not yet been imposed, sentence shall be imposed
14 by the court.

15 (d) Notwithstanding any other provision of law to the contrary, the judge, the
16 state, the defendant, and the agencies involved in the defendant's treatment plan are
17 entitled to information and reports bearing on the defendant's assessment, treatment,
18 and progress. The victim is entitled to periodic reports on the defendant's progress and
19 participation.

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

22 (1) require the defendant to submit to electronic monitoring;

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

24 (f) A court shall refer a defendant who is ordered to participate in a treatment
25 program under this section to an alcohol safety action program developed and
26 implemented or designated under AS 47.37.040(21) for screening, referral, and
27 monitoring.

28 (g) In addition to other conditions authorized under AS 12.30, a court may
29 require the defendant to take a drug or combination of drugs intended to prevent
30 substance abuse.

31 (h) In this section,

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

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

4 (B) includes planning and treatment for alcohol or drug
5 addiction;

6 (C) includes emphasis on personal responsibility;

7 (D) provides in-court recognition of progress and sanctions for
8 relapses;

9 (E) requires payment of restitution to victims and completion
10 of community work service;

11 (F) includes physician approved treatment of physical addiction
12 and treatment of the psychological causes of addiction;

13 (G) includes a monitoring program and physical placement or
14 housing; and

15 (H) requires adherence to conditions of probation;

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

18 * **Sec. 4.** AS 28.35.030(b) is amended to read:

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

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 (n) 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 (n) 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 (n) 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 (n) of this section;

9 (2) the court may not

10 (A) suspend execution of sentence or grant probation except on
11 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;

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; and

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.

26 * **Sec. 5.** AS 28.35.032(g) is amended to read:

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

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

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

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

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

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

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

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

15 (2) the court may not

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

18 (i) serve the minimum imprisonment under (1) of this
19 subsection; and

20 (ii) pay the minimum fine required under (1) of this
21 subsection; or

22 (B) suspend imposition of sentence;

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

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

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

3 * **Sec. 6.** AS 47.37.040 is amended to read:

4 **Sec. 47.37.040. Duties of department.** The department shall

5 (1) develop, encourage, and foster statewide, regional, and local plans
 6 and programs for the prevention of alcoholism and drug abuse and treatment of
 7 alcoholics, intoxicated persons, drug abusers, and inhalant abusers in cooperation with
 8 public and private agencies, organizations, and individuals, and provide technical
 9 assistance and consultation services for these purposes;

10 (2) coordinate the efforts and enlist the assistance of all public and
 11 private agencies, organizations, and individuals interested in prevention of alcoholism,
 12 drug abuse, and inhalant abuse, and treatment of alcoholics, intoxicated persons, drug
 13 abusers, and inhalant abusers;

14 (3) cooperate with the Department of Corrections in establishing and
 15 conducting programs to provide treatment for alcoholics, intoxicated persons, drug
 16 abusers, and inhalant abusers in or on parole from penal institutions;

17 (4) cooperate with the Department of Education and Early
 18 Development, school boards, schools, police departments, courts, and other public and
 19 private agencies, organizations, and individuals in establishing programs for the
 20 prevention of alcoholism, drug abuse, and inhalant abuse, and treatment of alcoholics,
 21 intoxicated persons, drug abusers, and inhalant abusers, and preparing curriculum
 22 materials for use at all levels of school education;

23 (5) prepare, publish, evaluate, and disseminate educational material
 24 dealing with the nature and effects of alcohol and drugs, and the misuse of hazardous
 25 volatile substances;

26 (6) develop and implement, as an integral part of treatment programs,
 27 an educational program for use in the treatment of alcoholics, intoxicated persons,
 28 drug abusers, and inhalant abusers that includes the dissemination of information
 29 concerning the nature and effects of alcohol, drugs, and hazardous volatile substances;

30 (7) organize and foster training programs for all persons engaged in
 31 treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers, and

1 establish standards for training paraprofessional alcoholism, drug abuse, and inhalant
2 abuse workers;

3 (8) sponsor and encourage research into the causes and nature of
4 alcoholism, drug abuse, and inhalant abuse, and the treatment of alcoholics,
5 intoxicated persons, drug abusers, and inhalant abusers, and serve as a clearinghouse
6 for information relating to alcoholism, drug abuse, and inhalant abuse;

7 (9) specify uniform methods for keeping statistical information by
8 public and private agencies, organizations, and individuals, and collect and make
9 available relevant statistical information, including number of persons treated,
10 frequency of admission and readmission, and frequency and duration of treatment;

11 (10) conduct program planning activities approved by the Advisory
12 Board on Alcoholism and Drug Abuse;

13 (11) review all state health, welfare, and treatment plans to be
14 submitted for federal funding, and advise the commissioner on provisions to be
15 included relating to alcoholics, intoxicated persons, drug abusers, and inhalant
16 abusers;

17 (12) assist in the development of, and cooperate with, alcohol, drug
18 abuse, and inhalant abuse education and treatment programs for employees of state
19 and local governments and businesses and industries in the state;

20 (13) use the support and assistance of interested persons in the
21 community, particularly recovered alcoholics, drug abusers, and inhalant abusers, to
22 encourage alcoholics, drug abusers, and inhalant abusers to voluntarily undergo
23 treatment;

24 (14) cooperate with the Department of Public Safety and the
25 Department of Transportation and Public Facilities in establishing and conducting
26 programs designed to deal with the problem of persons operating motor vehicles while
27 under the influence of an alcoholic beverage, inhalant, or controlled substance, and
28 develop and approve alcohol information courses required to be taken by drivers under
29 AS 28.15 or made available to drivers to reduce points assessed for violation of traffic
30 laws;

31 (15) encourage hospitals and other appropriate health facilities to

1 admit without discrimination alcoholics, intoxicated persons, drug abusers, and
2 inhalant abusers and to provide them with adequate and appropriate treatment;

3 (16) encourage all health insurance programs to include alcoholism
4 and drug abuse as a covered illness;

5 (17) prepare an annual report covering the activities of the department
6 and notify the legislature that the report is available;

7 (18) develop and implement a training program on alcoholism and
8 drug abuse for employees of state and municipal governments, and private institutions;

9 (19) develop curriculum materials on drug and alcohol abuse and the
10 misuse of hazardous volatile substances for use in grades kindergarten through 12, as
11 well as a course of instruction for teachers to be charged with presenting the
12 curriculum;

13 (20) develop and implement or designate, in cooperation with other
14 state or local agencies, a juvenile alcohol safety action program that provides alcohol
15 and substance abuse screening, referral, and monitoring of persons under 18 years of
16 age who have been referred to it by

17 (A) a court in connection with a charge or conviction of a
18 violation or misdemeanor related to the use of alcohol or a controlled
19 substance;

20 (B) the agency responsible for the administration of motor
21 vehicle laws in connection with a license action related to the use of alcohol or
22 a controlled substance; or

23 (C) department staff after a delinquency adjudication that is
24 related to the use of alcohol or a controlled substance;

25 (21) develop and implement, or designate, in cooperation with other
26 state or local agencies, an alcohol safety action program that provides alcohol and
27 substance abuse screening, referral, and monitoring services to persons who have been
28 referred by a court in connection with a charge or conviction of a misdemeanor
29 involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled
30 substance, **referred by a court under AS 28.35.028**, or referred by an agency of the
31 state with the responsibility for administering motor vehicle laws in connection with a

1 driver's license action involving the use of alcohol or a controlled substance.

2 * **Sec. 7.** AS 28.35.030(p) and 28.35.032(r) are repealed.

3 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **INDIRECT COURT RULE AMENDMENT.** AS 28.35.028(b), added by sec. 2 of this
6 Act, has the effect of amending Rule 35, Alaska Rules of Criminal Procedure, by allowing a
7 court to consider and reduce a criminal sentence outside of the time periods currently
8 provided by that rule.

9 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

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

16 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).