

CS FOR SENATE BILL NO. 36(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/21/07

Referred: Finance

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sentencing for the commission of certain offenses influenced by**
2 **alcohol and to the offense of consumption of alcohol in violation of sentence."**

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

4 *** Section 1.** AS 11.56 is amended by adding a new section to read:

5 **Sec. 11.56.768. Consumption of alcohol in violation of sentence.** (a) A
6 person commits the crime of consumption of alcohol in violation of sentence if the
7 person knowingly consumes alcohol in violation of an order imposed under
8 AS 12.55.015(a)(13), AS 28.35.030, or 28.35.032.

9 (b) In a prosecution under this section, it is an affirmative defense that

10 (1) the alcohol was consumed under the direction of, a health care
11 professional as part of medical treatment of the defendant; or

12 (2) the alcohol was consumed as a nonprescription medication in doses
13 and for the purposes recommended by the manufacturer of the medication or as
14 approved by the United States Food and Drug Administration.

1 (c) In this section, "consumption of alcohol" means to ingest, orally or
2 otherwise, alcohol or any substance containing alcohol.

3 (d) Except as provided in (e) of this section, consumption of alcohol in
4 violation of sentence is a class A misdemeanor.

5 (e) Consumption of alcohol in violation of sentence is a class C felony if the
6 defendant has been previously convicted of violating this section.

7 * **Sec. 2.** AS 12.55.015(a) is amended to read:

8 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
9 sentence on a defendant convicted of an offense, may singly or in combination

10 (1) impose a

11 (A) fine when authorized by law and as provided in
12 AS 12.55.035; or

13 (B) day fine when authorized by law and as provided in
14 AS 12.55.036 if the court does not impose a term of periodic or continuous
15 imprisonment or place the defendant on probation;

16 (2) order the defendant to be placed on probation under conditions
17 specified by the court that may include provision for active supervision;

18 (3) impose a definite term of periodic imprisonment;

19 (4) impose a definite term of continuous imprisonment;

20 (5) order the defendant to make restitution under AS 12.55.045;

21 (6) order the defendant to carry out a continuous or periodic program
22 of community work under AS 12.55.055;

23 (7) suspend execution of all or a portion of the sentence imposed under
24 AS 12.55.080;

25 (8) suspend imposition of sentence under AS 12.55.085;

26 (9) order the forfeiture to the commissioner of public safety or a
27 municipal law enforcement agency of a deadly weapon that was in the actual
28 possession of or used by the defendant during the commission of an offense described
29 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

30 (10) order the defendant, while incarcerated, to participate in or
31 comply with the treatment plan of a rehabilitation program that is related to the

1 defendant's offense or to the defendant's rehabilitation if the program is made available
2 to the defendant by the Department of Corrections;

3 (11) order the forfeiture to the state of a motor vehicle, weapon,
4 electronic communication device, or money or other valuables, used in or obtained
5 through an offense that was committed for the benefit of, at the direction of, or in
6 association with a criminal street gang;

7 (12) order the defendant to have no contact, either directly or
8 indirectly, with a victim or witness of the offense until the defendant is
9 unconditionally discharged;

10 **(13) order the defendant to refrain from consuming alcohol,**
11 **subject to AS 11.56.768, for a period of time up to the lifetime of the defendant,**
12 **including during the term of any sentence and as a condition of probation,**
13 **suspended sentence, and suspended imposition of sentence, if**

14 **(A) the defendant was convicted of a felony under AS 11.41**
15 **and the court finds by clear and convincing evidence that the defendant's**
16 **conduct constituting the offense was substantially influenced by the**
17 **consumption of alcohol and that, based on the defendant's history, there is**
18 **reason to believe that imposing a requirement that the defendant refrain**
19 **from consuming alcohol is necessary to protect the public; or**

20 **(B) the court finds by clear and convincing evidence that,**
21 **based on the defendant's history, there is reason to believe that imposing a**
22 **requirement that the defendant refrain from consuming alcohol is**
23 **necessary to protect the public and the defendant was convicted of a**
24 **violation of AS 28.35.030 or 28.35.032 and the defendant has been**
25 **previously convicted two or more times or the offense resulted in death or**
26 **serious physical injury to another person; in this subparagraph,**
27 **"previously convicted" has the meaning given in AS 28.35.030.**

28 * **Sec. 3.** AS 12.55.015 is amended by adding a new subsection to read:

29 (j) Nothing in (a)(13) of this section limits or restricts the authority of a court
30 to order a person to refrain from the consumption of alcohol as a condition of sentence
31 or probation.

1 * **Sec. 4.** AS 28.35.028(a) is amended to read:

2 (a) Notwithstanding another provision of law, with the consent of the state and
3 the defendant, the court may elect to proceed in a criminal case under AS 11.56.768,
4 AS 28.35.030, or 28.35.032, including the case of a defendant charged with violating
5 the terms of probation, under the procedure provided in this section and order the
6 defendant to complete a court-ordered treatment program. The state may not consent
7 to a referral under this subsection unless the state has consulted with the victim and
8 explained the process and consequences of the referral to the victim. A court may not
9 elect to proceed under this section if the defendant has previously participated in a
10 court-ordered treatment program under this section two or more times.

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

13 **APPLICABILITY.** This Act applies to offenses committed on or after the effective
14 date of this Act. References to previous convictions apply to convictions occurring before, on,
15 or after the effective date of this Act.