

HOUSE BILL NO. 373

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 3/13/14

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to conditions of release and probation in criminal cases; relating to
2 ignition interlock devices in cases involving driving under the influence and refusal to
3 submit to a chemical test; relating to limited drivers' licenses; requiring the
4 commissioner of health and social services to establish programs for persons with
5 conditions of release, with conditions of probation, and with certain limited licenses that
6 require testing for controlled substances and alcoholic beverages; and providing for an
7 effective date."

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

9 * **Section 1.** AS 12.30.011(b) is amended to read:

10 (b) If a judicial officer determines that the release under (a) of this section will
11 not reasonably assure the appearance of the person or will pose a danger to the victim,
12 other persons, or the community, the officer shall impose the least restrictive condition
13 or conditions that will reasonably assure the person's appearance and protect the

1 victim, other persons, and the community. In addition to conditions under (a) of this
 2 section, the judicial officer may, singly or in combination,

3 (1) require the execution of an appearance bond in a specified amount
 4 of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent
 5 of the amount of the bond;

6 (2) require the execution of a bail bond with sufficient solvent sureties
 7 or the deposit of cash;

8 (3) require the execution of a performance bond in a specified amount
 9 of cash to be deposited in the registry of the court;

10 (4) place restrictions on the person's travel, association, or residence;

11 (5) order the person to refrain from possessing a deadly weapon on the
 12 person or in the person's vehicle or residence;

13 (6) require the person to maintain employment or, if unemployed,
 14 actively seek employment;

15 (7) require the person to notify the person's lawyer and the prosecuting
 16 authority within two business days after any change in employment;

17 (8) require the person to avoid all contact with a victim, a potential
 18 witness, or a codefendant;

19 (9) require the person to refrain from the consumption and possession
 20 of alcoholic beverages;

21 (10) require the person to refrain from the use of a controlled substance
 22 as defined by AS 11.71, unless prescribed by a licensed health care provider with
 23 prescriptive authority;

24 (11) require the person to be physically inside the person's residence,
 25 or in the residence of the person's third-party custodian, at time periods set by the
 26 court;

27 (12) require the person to keep regular contact with a law enforcement
 28 officer or agency;

29 (13) order the person to refrain from entering or remaining in premises
 30 licensed under AS 04;

31 (14) place the person in the custody of an individual who agrees to

1 serve as a third-party custodian of the person as provided in AS 12.30.021;

2 (15) if the person is under the treatment of a licensed health care
3 provider, order the person to follow the provider's treatment recommendations;

4 (16) order the person to take medication that has been prescribed for
5 the person by a licensed health care provider with prescriptive authority;

6 (17) order the person to comply with any other condition that is
7 reasonably necessary to assure the appearance of the person and to assure the safety of
8 the victim, other persons, and the community;

9 **(18) require the person to comply with a program established**
10 **under AS 47.38.020 if the person has been charged with an alcohol-related or**
11 **substance abuse-related offense that is an unclassified felony, a class A felony, a**
12 **sexual felony, or a crime involving domestic violence.**

13 * Sec. 2. AS 12.30.016(b) is amended to read:

14 (b) In a prosecution charging a violation of AS 04.11.010, 04.11.499,
15 AS 28.35.030, or 28.35.032, a judicial officer may order the person

16 (1) to refrain from

17 (A) consuming alcoholic beverages; or

18 (B) possessing on the person, in the person's residence, or in
19 any vehicle or other property over which the person has control, alcoholic
20 beverages;

21 (2) to submit to a search without a warrant of the person, the person's
22 personal property, the person's residence, or any vehicle or other property over which
23 the person has control, for the presence of alcoholic beverages by a peace officer who
24 has reasonable suspicion that the person is violating the conditions of the person's
25 release by possessing alcoholic beverages;

26 (3) to submit to a breath test when requested by a law enforcement
27 officer;

28 (4) to provide a sample for a urinalysis or blood test when requested by
29 a law enforcement officer;

30 (5) to take a drug or combination of drugs intended to prevent
31 substance abuse;

(6) to follow any treatment plan imposed by the court under AS 28.35.028;

(7) to comply with a program established under AS 47.38.020.

* **Sec. 3.** AS 12.30.016(c) is amended to read:

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may order the person

(1) to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

(3) to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) to refrain from being physically present at, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) to refrain from the use or possession of an inhalant;

(7) to comply with a program established under AS 47.38.020.

* **Sec. 4.** AS 12.55.100(a) is amended to read:

(a) While on probation and among the conditions of probation, the defendant may be required

(1) to pay a fine in one or several sums;

(2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had, including compensation to a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime;

(3) to provide for the support of any persons for whose support the defendant is legally responsible;

(4) to perform community work in accordance with AS 12.55.055;

(5) to participate in or comply with the treatment plan of an inpatient or outpatient rehabilitation program specified by either the court or the defendant's probation officer that is related to the defendant's offense or to the defendant's rehabilitation; and

(6) to satisfy the screening, evaluation, referral, and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment;

(7) to comply with a program established under AS 47.38.020.

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

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

(1) the revocation was for a misdemeanor conviction under AS 28.35.030 or a similar municipal ordinance and not for a violation of AS 28.35.032;

(2) the person

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

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

(3) the court or department requires **that** the person **either**

(A) [TO] use an ignition interlock device during the period of

the limited license whenever the person operates a motor vehicle in a community not included in the list published by the department under AS 28.22.011(b) and, when applicable, [(A)] the person provides proof of installation of the ignition interlock device on every vehicle the person operates; **or**

(B) **submit to daily testing as required under AS 47.38.020 in place of the use of the ignition interlock device; use of daily testing in place of an ignition interlock device under this subparagraph is conditioned upon the person's not violating the requirements of the program established in AS 47.38.020; if the person violates those requirements, the court or the department shall reimpose the requirement of the use of an ignition interlock device as required by subparagraph (A)**

[THE PERSON SIGNS AN AFFIDAVIT ACKNOWLEDGING THAT

(i) OPERATION BY THE PERSON OF A VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK DEVICE IS SUBJECT TO PENALTIES FOR DRIVING WITH A REVOKED LICENSE;

(ii) CIRCUMVENTING OR TAMPERING WITH THE IGNITION INTERLOCK DEVICE IS A CLASS A MISDEMEANOR; AND

(iii) THE PERSON IS REQUIRED TO MAINTAIN THE IGNITION INTERLOCK DEVICE THROUGHOUT THE PERIOD OF THE LIMITED LICENSE, TO KEEP UP-TO-DATE RECORDS IN EACH VEHICLE SHOWING THAT ANY REQUIRED SERVICE AND CALIBRATION IS CURRENT, AND TO PRODUCE THOSE RECORDS IMMEDIATELY ON REQUEST];

(4) the person is enrolled in and is in compliance with or has successfully completed the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030(h);

(5) the person provides proof of insurance as required by AS 28.20.230

1 and 28.20.240; and

2 (6) the person has not previously been convicted of violating the
3 limitations of an ignition interlock limited license or been convicted of violating the
4 provisions of AS 28.35.030 or 28.35.032 while on probation for a violation of those
5 sections.

6 *** Sec. 6.** AS 28.15.201 is amended by adding a new subsection to read:

7 (g) A person granted a limited license and required to use an ignition interlock
8 device under (d)(3)(A) of this section shall sign an affidavit acknowledging that

9 (1) operation by the person of a vehicle that is not equipped with an
10 ignition interlock device is subject to penalties for driving with a revoked license;

11 (2) circumventing or tampering with the ignition interlock device is a
12 class A misdemeanor; and

13 (3) the person is required to maintain the ignition interlock device
14 throughout the period of the limited license, to keep up-to-date records in each vehicle
15 showing that any required service and calibration is current, and to produce those
16 records immediately on request;

17 *** Sec. 7.** AS 28.35.030(b) is amended to read:

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

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

22 (A) not less than 72 consecutive hours, require the person to
23 use an ignition interlock device after the person regains the privilege [,
24 INCLUDING ANY LIMITED PRIVILEGE,] to operate a motor vehicle for a
25 minimum of six months, and impose a fine of not less than \$1,500 if the person
26 has not been previously convicted;

27 (B) not less than 20 days, require the person to use an ignition
28 interlock device after the person regains the privilege [, INCLUDING ANY
29 LIMITED PRIVILEGE,] to operate a motor vehicle for a minimum of 12
30 months, and impose a fine of not less than \$3,000 if the person has been
31 previously convicted once;

1 (C) not less than 60 days, require the person to use an ignition
 2 interlock device after the person regains the privilege [, INCLUDING ANY
 3 LIMITED PRIVILEGE,] to operate a motor vehicle for a minimum of 18
 4 months, and impose a fine of not less than \$4,000 if the person has been
 5 previously convicted twice and is not subject to punishment under (n) of this
 6 section;

7 (D) not less than 120 days, require the person to use an ignition
 8 interlock device after the person regains the privilege [, INCLUDING ANY
 9 LIMITED PRIVILEGE,] to operate a motor vehicle for a minimum of 24
 10 months, and impose a fine of not less than \$5,000 if the person has been
 11 previously convicted three times and is not subject to punishment under (n) of
 12 this section;

13 (E) not less than 240 days, require the person to use an ignition
 14 interlock device after the person regains the privilege [, INCLUDING ANY
 15 LIMITED PRIVILEGE,] to operate a motor vehicle for a minimum of 30
 16 months, and impose a fine of not less than \$6,000 if the person has been
 17 previously convicted four times and is not subject to punishment under (n) of
 18 this section;

19 (F) not less than 360 days, require the person to use an ignition
 20 interlock device after the person regains the privilege [, INCLUDING ANY
 21 LIMITED PRIVILEGE,] to operate a motor vehicle for a minimum of 36
 22 months, and impose a fine of not less than \$7,000 if the person has been
 23 previously convicted more than four times and is not subject to punishment
 24 under (n) of this section;

25 (2) the court may not

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

28 (i) serve the minimum imprisonment under (1) of this
 29 subsection;

30 (ii) pay the minimum fine required under (1) of this
 31 subsection;

1 (B) suspend imposition of sentence; or

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

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

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

15 * **Sec. 8.** AS 28.35.030(t) is amended to read:

16 (t) Notwithstanding (b) or (n) of this section, the court

17 **(1) shall waive the requirement of the use of an ignition interlock**
18 **device when a person operates a motor vehicle in a community included on the list**
19 **published by the department under AS 28.22.011(b);**

20 **(2) may waive the requirement of the use of an ignition interlock**
21 **device when the person regains the privilege to operate a motor vehicle if the**
22 **court requires that a person convicted under this section submit to daily testing**
23 **as required under AS 47.38.020 in place of the use of the ignition interlock**
24 **device; use of daily testing in place of an ignition interlock device under this**
25 **subsection is conditioned upon the person's not violating the requirements of the**
26 **program established in AS 47.38.020; if the person violates those requirements,**
27 **the court shall reimpose the requirement of the use of an ignition interlock device**
28 **as required by (b) or (n) of this section.**

29 * **Sec. 9.** AS 28.35.032(t) is amended to read:

30 (t) Notwithstanding (g) or (p) of this section, the court

31 **(1) shall waive the requirement of the use of an ignition interlock**

device when a person operates a motor vehicle in a community included on the list published by the department under AS 28.22.011(b);

(2) may waive the requirement of the use of an ignition interlock device when the person regains the privilege to operate a motor vehicle if the court requires that a person convicted under this section submit to daily testing as required under AS 47.38.020 in place of the use of the ignition interlock device; use of daily testing in place of an ignition interlock device under this subsection is conditioned upon the person's not violating the requirements of the program established in AS 47.38.020; if the person violates those requirements, the court or the department shall reimpose the requirement of the use of an ignition interlock device as required by (g) or (p) of this section.

* **Sec. 10.** AS 47 is amended by adding a new chapter to read:

Chapter 38. Alcohol and Substance Abuse Accountability

Article 1. Alcohol and Substance Abuse Monitoring and Treatment for Persons Released on Bail or on Probation.

Sec. 47.38.010. Cooperation with the Department of Corrections. The department shall cooperate with the Department of Corrections in establishing and conducting programs to provide treatment for alcoholics, intoxicated persons, drug abusers, and inhalant abusers who are on conditions of release as provided in AS 12.30 or on probation.

Sec. 47.38.020. Alcohol and substance abuse monitoring program. (a) The commissioner, in cooperation with the commissioner of corrections, shall establish a program for certain persons with release conditions ordered as provided under AS 12.30, offenders with conditions of probation that include not consuming controlled substances or alcoholic beverages, persons required to participate in the program as a condition of receiving limited licenses under AS 28.15.201(d), and persons required to participate in the program in place of using an interlock device as provided in AS 28.35.030(t)(2) and 28.35.032(t)(2).

(b) The commissioner shall adopt regulations to implement the program.

(c) The commissioner shall include in the program

(1) a requirement for twice-a-day testing, in person if practicable, for

1 alcoholic beverage use and random testing for controlled substances;

2 (2) a means to provide the probation officer, prosecutor's office,
3 Department of Administration, or local law enforcement agency with notice within 24
4 hours, so that a complaint may be filed alleging a violation of AS 11.56.757, a petition
5 may be filed with the court seeking appropriate sanctions and may be scheduled by the
6 court for a prompt hearing, a requirement to use an ignition interlock device may be
7 reimposed by the court or the Department of Administration, or an arrest warrant may
8 be issued for the person on release or offender with conditions of probation provided
9 in this subsection, if the person or offender

10 (A) fails to appear for an appointment as required by the
11 program requirements; or

12 (B) tests positive for the use of controlled substances or
13 alcoholic beverages; and

14 (3) a requirement that the person or offender pay, based on the person's
15 or offender's ability under financial guidelines established by the commissioner, for
16 the cost of participating in the program.

17 (d) The department shall provide or conduct the testing required under (c) of
18 this section.

19 **Article 2. General Provisions.**

20 **Sec. 47.38.199. Definitions.** In this chapter,

21 (1) "commissioner" means the commissioner of health and social
22 services;

23 (2) "department" means the Department of Health and Social Services.

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

26 **APPLICABILITY.** (a) AS 12.30.011(b), as amended by sec. 1 of this Act,
27 AS 12.30.016(b), as amended by sec. 2 of this Act, AS 12.30.016(c), as amended by sec. 3 of
28 this Act, AS 28.15.201(d), as amended by sec. 5 of this Act, AS 28.15.201(g), added by sec. 6
29 of this Act, AS 28.35.030(b), as amended by sec. 7 of this Act, AS 28.35.030(t), as amended
30 by sec. 8 of this Act, and AS 28.35.032(t), as amended by sec. 9 of this Act, apply to offenses
31 occurring on or after the effective dates of this Act.

1 (b) The changes made to AS 12.55.100(a), as amended by sec. 4 of this Act, and
2 AS 47.38, enacted by sec. 10 of this Act, apply to offenses occurring before, on, or after the
3 effective date of this Act.

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

6 TRANSITIONAL PROVISIONS: REGULATIONS. (a) The Department of Health
7 and Social Services may adopt regulations necessary to implement AS 47.38.010 - 47.38.199,
8 added by sec. 10 of this Act.

9 (b) The regulations adopted under (a) of this section take effect under AS 44.62
10 (Administrative Procedure Act), but not before July 1, 2014.

11 * **Sec. 13.** This Act takes effect July 1, 2014.