

BY REP. ULMER, Ellis

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 366

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the treatment and rehabilitation
7 of a defendant convicted of an offense."

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

9 * Section 1. AS 12.55.015(a) is amended to read:

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

13 (1) impose a fine when authorized by law and as provided in
14 AS 12.55.035;

15 (2) order the defendant to be placed on probation under
16 conditions specified by the court that may include provision for
17 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.-
21 55.045;

22 (6) order the defendant to carry out a continuous or peri-
23 odic program of community work under AS 12.55.055;

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

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

27 (9) order the forfeiture to the commissioner of public
28 safety of a deadly weapon that was in the actual possession of or used
29 by the defendant during the commission of an offense described in

1 AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

2 (10) order the defendant, while incarcerated, to participate
3 in or successfully complete a rehabilitation program that is related
4 to the defendant's offense or to the defendant's rehabilitation, if
5 the program is made available to the defendant by the Department of
6 Corrections.

7 * Sec. 2. AS 12.55.085(b) is amended to read:

8 (b) At any time during the probationary term of the person
9 released on probation, a probation officer may, without warrant or
10 other process, rearrest the person so placed in the officer's care and
11 bring the person before the court, or the court may, in its discre-
12 tion, issue a warrant for the rearrest of the person. The court [AND]
13 may revoke and terminate the probation [,] if the interests of justice
14 require, and if the court, in its judgment, has reason to believe that
15 the person placed upon probation is

16 (1) violating the conditions of probation;
17 (2) [, OR] engaging in criminal practices; or
18 (3) violating an order of the court to participate in or
19 successfully complete a rehabilitation program under AS 12.55.-
20 015(a)(10) [, OR HAS BECOME ABANDONED TO IMPROPER ASSOCIATES, OR A
21 VICIOUS LIFE].

22 * Sec. 3. AS 12.55.100(a) is amended to read:

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

25 (1) to pay a fine in one or several sums;
26 (2) to make restitution or reparation to aggrieved parties
27 for actual damages or loss caused by the crime for which conviction
28 was had;
29 (3) to provide for the support of any persons for whose

1 support the defendant is legally responsible; [AND]

2 (4) to perform community work in accordance with AS 12.-
3 55.055;

4 (5) to participate in or successfully complete an inpatient
5 rehabilitation program specified by either the court or the defen-
6 dant's probation officer that is related to the defendant's offense or
7 to the defendant's rehabilitation; and

8 (6) to satisfy the screening, evaluation, referral, pro-
9 gram, and fee requirements of an agency authorized by the court to
10 make referrals for rehabilitative treatment.

11 * Sec. 4. AS 12.55.100 is amended by adding a new subsection to read:

12 (c) A program of inpatient treatment may be required by the
13 referral agency under (a)(6) of this section only if authorized in the
14 judgment, and may not exceed the maximum term of inpatient treatment
15 specified in the judgment. A person who has been referred for inpa-
16 tient treatment may make a written request to the sentencing court
17 asking the court to review the referral. The request for review shall
18 be made within seven days of the agency's referral, and shall specif-
19 ically set out the grounds upon which the request for review is based.
20 The court may order a hearing on the request for review. If the
21 person establishes by clear and convincing evidence that the referral
22 for inpatient treatment was arbitrary or capricious, the court may
23 rescind or modify the referral.

24 * Sec. 5. AS 12.55.110 is amended by adding a new subsection to read:

25 (b) Good cause justifying the revocation of a suspended sentence
26 is established if the defendant has violated an order of the court to
27 participate in or successfully complete a rehabilitation program under
28 AS 12.55.015(a)(10).

29 * Sec. 6. AS 28.35.030(c) is amended to read:

1 (c) Upon conviction under this section the court shall impose a
2 minimum sentence of imprisonment of not less than 72 consecutive hours
3 and a fine of not less than \$250 if the person has not been previously
4 convicted in this or another jurisdiction of driving while intoxicated
5 under this or another law or ordinance with substantially similar
6 elements or refusal to submit to a chemical test under AS 28.35.032 or
7 another law or ordinance with substantially similar elements. Upon
8 conviction under this section the court shall impose a minimum sen-
9 tence of imprisonment of not less than 20 consecutive days and a fine
10 of not less than \$500 if, within the preceding 10 years, the person
11 has been previously convicted once in this or another jurisdiction of
12 driving while intoxicated under this or another law or ordinance with
13 substantially similar elements or refusal to submit to a chemical test
14 under AS 28.35.032 or another law or ordinance with substantially
15 similar elements. Upon conviction under this section the court shall
16 impose a minimum sentence of imprisonment of not less than 30 consecu-
17 tive days and a fine of not less than \$1,000 if, within the preceding
18 10 years, the person has been previously convicted in this or another
19 jurisdiction of more than one of the following offenses or has more
20 than once been previously convicted of one of the following offenses:
21 (1) driving while intoxicated under this or another law or ordinance
22 with substantially similar elements; (2) refusal to submit to a chemi-
23 cal test under AS 28.35.032 or another law or ordinance with substan-
24 tially similar elements. The execution of sentence may not be sus-
25 pended nor may probation be granted except on condition that the
26 minimum imprisonment provided in this section is served. Probation may
27 be conditioned as provided in AS 12.55.102. Imposition of sentence
28 may not be suspended. In addition, if the offense involved driving a
29 motor vehicle for which a driver's license is required, the person's

1 driver's license shall be revoked in accordance with AS 28.15.181 and
2 the vehicle used in commission of the offense may be forfeited under
3 AS 28.35.036. [IN ADDITION, THE COURT SHALL ORDER, AND A PERSON
4 CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPECIFIED BY
5 THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION THAT
6 THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (d)
7 OF THIS SECTION, FINDS APPROPRIATE.]

8 * Sec. 7. AS 28.35.030 is amended by adding new subsections to read:

9 (i) The court shall order a person convicted under this section
10 to satisfy the screening, evaluation, referral, program, and fee
11 requirements of an agency authorized by the court to make referrals
12 for rehabilitative treatment.

13 (j) A program of inpatient treatment may be required by the
14 referral agency under (i) of this section only if authorized in the
15 judgment, and may not exceed the maximum term of inpatient treatment
16 specified in the judgment. A person who has been referred for inpa-
17 tient treatment under this subsection may make a written request to
18 the sentencing court asking the court to review the referral. The
19 request for review shall be made within seven days of the agency's
20 referral, and shall specifically set out the grounds upon which the
21 request for review is based. The court may order a hearing on the
22 request for review. If the person establishes by clear and convincing
23 evidence that the referral for inpatient treatment was arbitrary or
24 capricious, the court may rescind or modify the referral.

25 (k) If a person fails to satisfy the requirements of an au-
26 thorized agency under (j) of this section, the court

27 (1) may impose any portion of a suspended sentence;

28 (2) may punish the failure as contempt of the authority of
29 the court under AS 09.50.010 or as a violation of a condition of

1 probation; and

2 (3) shall order the revocation or suspension of the per-
3 son's driver's license until the requirements are satisfied.

4 * Sec. 8. AS 28.35.032(g) is amended to read:

5 (g) Upon conviction of a person under this section, the court
6 shall impose a minimum sentence of imprisonment of not less than 72
7 consecutive hours and a fine of not less than \$250 if the person has
8 not been previously convicted in this or another jurisdiction of
9 driving while intoxicated under AS 28.25.030 or another law or ordi-
10 nance with substantially similar elements or refusal to submit to a
11 chemical test under this section or another law or ordinance with
12 substantially similar elements. Upon conviction under this section the
13 court shall impose a minimum sentence of imprisonment of not less than
14 20 consecutive days and a fine of not less than \$500 if, within the
15 preceding 10 years, the person has been previously convicted once in
16 this or another jurisdiction of driving while intoxicated under
17 AS 28.35.030 or another law or ordinance with substantially similar
18 elements or refusal to submit to a chemical test under this section or
19 another law or ordinance with substantially similar elements. Upon
20 conviction under this section the court shall impose a minimum sen-
21 tence of imprisonment of not less than 30 consecutive days and a fine
22 of not less than \$1,000, if, within the previous 10 years, the person
23 has been previously convicted in this or another jurisdiction of more
24 than one of the following offenses or has more than once been previ-
25 ously convicted of one of the following offenses: (1) driving while
26 intoxicated under AS 28.35.030 or another law or ordinance with sub-
27 stantially similar elements; (2) refusal to submit to a chemical test
28 under this section or another law or ordinance with substantially
29 similar elements. The execution of sentence may not be suspended nor

1 may probation be granted except on condition that the minimum impris-
2 onment provided in this section is served. Probation may be condi-
3 tioned as provided in AS 12.55.102. Imposition of sentence may not be
4 suspended. If the offense involved driving a motor vehicle for which
5 a driver's license is required, the person's driver's license shall be
6 revoked under AS 28.15.181. [IN ADDITION, THE COURT SHALL ORDER, AND A
7 PERSON CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPEC-
8 IFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITA-
9 TION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED
10 UNDER (h) OF THIS SECTION, FINDS APPROPRIATE.] The sentence imposed
11 by the court under this subsection shall run consecutively with any
12 other sentence of imprisonment imposed on the committed person.

13 * Sec. 9. AS 28.35.032 is amended by adding new subsections to read:

14 (l) The court shall order a person convicted under this section
15 to satisfy the screening, evaluation, referral, program, and fee
16 requirements of an agency authorized by the court to make referrals
17 for rehabilitative treatment.

18 (m) A program of inpatient treatment may be required by the
19 referral agency under (l) of this section only if authorized in the
20 judgment, and may not exceed the maximum term of inpatient treatment
21 specified in the judgment. A person who has been referred for inpa-
22 tient treatment under this subsection may make a written request to
23 the sentencing court asking the court to review the referral. The
24 request for review shall be made within seven days of the agency's
25 referral, and shall specifically set out the grounds upon which the
26 request for review is based. The court may order a hearing on the
27 request for review. If the person establishes by clear and convincing
28 evidence that the referral for inpatient treatment was arbitrary or
29 capricious, the court may rescind or modify the referral.

1 (n) If a person fails to satisfy the requirements of an au-
2 thorized agency under (m) of this section, the court

3 (1) may impose any portion of a suspended sentence;

4 (2) may punish the failure as contempt of the authority of
5 the court under AS 09.50.010 or as a violation of a condition of
6 probation; and

7 (3) shall order the revocation or suspension of the per-
8 son's driver's license until the requirements are satisfied.

9 * Sec. 10. AS 33.16.220(a) is amended to read:

10 (a) The board may revoke parole if the parolee

11 (1) engages in [FOR] conduct in violation of AS 33.16.-
12 150(a) or (b); or

13 (2) has violated an order of the court to participate in or
14 successfully complete a rehabilitation program under AS 12.55.-
15 015(a)(10).

16 * Sec. 11. AS 12.55.015(d) is repealed.