

Original sponsor(s): REP. ULMER, Ellis, Goll

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 366 (Judiciary)
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; and providing
8 for an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 12.55.015(a) is amended to read:
11 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
12 imposing sentence on a defendant convicted of an offense, may singly
13 or in combination
14 (1) impose a fine when authorized by law and as provided in
15 AS 12.55.035;
16 (2) order the defendant to be placed on probation under
17 conditions specified by the court that may include provision for
18 active supervision;
19 (3) impose a definite term of periodic imprisonment;
20 (4) impose a definite term of continuous imprisonment;
21 (5) order the defendant to make restitution under AS 12.-
22 55.045;
23 (6) order the defendant to carry out a continuous or peri-
24 odic program of community work under AS 12.55.055;
25 (7) suspend execution of all or a portion of the sentence
26 imposed under AS 12.55.080;
27 (8) suspend imposition of sentence under AS 12.55.085;
28 (9) order the forfeiture to the commissioner of public
29 safety of a deadly weapon that was in the actual possession of or used

1 by the defendant during the commission of an offense described in
2 AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

3 (10) order the defendant, while incarcerated, to participate
4 in or comply with the treatment plan of a rehabilitation program that
5 is related to the defendant's offense or to the defendant's reha-
6 bilitation, if the program is made available to the defendant by the
7 Department of Corrections.

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

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

17 (1) violating the conditions of probation;

18 (2) [, OR] engaging in criminal practices; or

19 (3) violating an order of the court to participate in or
20 comply with the treatment plan of a rehabilitation program under
21 AS 12.55.015(a)(10) [, OR HAS BECOME ABANDONED TO IMPROPER ASSOCIATES,
22 OR A VICIOUS LIFE].

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

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

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

27 (2) to make restitution or reparation to aggrieved parties
28 for actual damages or loss caused by the crime for which conviction
29 was had;

1 (3) to provide for the support of any persons for whose
2 support the defendant is legally responsible; [AND]

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

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

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

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

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

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

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

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

29 (c) Upon conviction under this section the court shall impose a

1 minimum sentence of imprisonment of not less than 72 consecutive hours
2 and a fine of not less than \$250 if the person has not been previously
3 convicted in this or another jurisdiction of driving while intoxicated
4 under this or another law or ordinance with substantially similar
5 elements or refusal to submit to a chemical test under AS 28.35.032 or
6 another law or ordinance with substantially similar elements. Upon
7 conviction under this section the court shall impose a minimum sen-
8 tence of imprisonment of not less than 20 consecutive days and a fine
9 of not less than \$500 if, within the preceding 10 years, the person
10 has been previously convicted once in this or another jurisdiction of
11 driving while intoxicated under this or another law or ordinance with
12 substantially similar elements or refusal to submit to a chemical test
13 under AS 28.35.032 or another law or ordinance with substantially
14 similar elements. Upon conviction under this section the court shall
15 impose a minimum sentence of imprisonment of not less than 30 consecu-
16 tive days and a fine of not less than \$1,000 if, within the preceding
17 10 years, the person has been previously convicted in this or another
18 jurisdiction of more than one of the following offenses or has more
19 than once been previously convicted of one of the following offenses:
20 (1) driving while intoxicated under this or another law or ordinance
21 with substantially similar elements; (2) refusal to submit to a chemi-
22 cal test under AS 28.35.032 or another law or ordinance with substan-
23 tially similar elements. The execution of sentence may not be sus-
24 pended nor may probation be granted except on condition that the
25 minimum imprisonment provided in this section is served. Probation may
26 be conditioned as provided in AS 12.55.102. Imposition of sentence
27 may not be suspended. In addition, if the offense involved driving a
28 motor vehicle for which a driver's license is required, the person's
29 driver's license shall be revoked in accordance with AS 28.15.181 and

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

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

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

12 (j) A program of inpatient treatment may be required by the
13 authorized agency under (i) 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
16 inpatient treatment under this subsection may make a written request
17 to the sentencing court asking the court to review the referral. The
18 request for review shall be made within seven days of the agency's
19 referral, and shall specifically set out the grounds upon which the
20 request for review is based. The court may order a hearing on the
21 request for review.

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

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

25 (2) may punish the failure as contempt of the authority of
26 the court under AS 09.50.010 or as a violation of a condition of
27 probation; and

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

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

2 (g) Upon conviction of a person under this section, the court
3 shall impose a minimum sentence of imprisonment of not less than 72
4 consecutive hours and a fine of not less than \$250 if the person has
5 not been previously convicted in this or another jurisdiction of
6 driving while intoxicated under AS 28.25.030 or another law or ordi-
7 nance with substantially similar elements or refusal to submit to a
8 chemical test under this section or another law or ordinance with
9 substantially similar elements. Upon conviction under this section the
10 court shall impose a minimum sentence of imprisonment of not less than
11 20 consecutive days and a fine of not less than \$500 if, within the
12 preceding 10 years, the person has been previously convicted once in
13 this or another jurisdiction of driving while intoxicated under
14 AS 28.35.030 or another law or ordinance with substantially similar
15 elements or refusal to submit to a chemical test under this section or
16 another law or ordinance with substantially similar elements. Upon
17 conviction under this section the court shall impose a minimum sen-
18 tence of imprisonment of not less than 30 consecutive days and a fine
19 of not less than \$1,000, if, within the previous 10 years, the person
20 has been previously convicted in this or another jurisdiction of more
21 than one of the following offenses or has more than once been previ-
22 ously convicted of one of the following offenses: (1) driving while
23 intoxicated under AS 28.35.030 or another law or ordinance with sub-
24 stantially similar elements; (2) refusal to submit to a chemical test
25 under this section or another law or ordinance with substantially
26 similar elements. The execution of sentence may not be suspended nor
27 may probation be granted except on condition that the minimum impris-
28 onment provided in this section is served. Probation may be condi-
29 tioned as provided in AS 12.55.102. Imposition of sentence may not be

1 suspended. If the offense involved driving a motor vehicle for which
2 a driver's license is required, the person's driver's license shall be
3 revoked under AS 28.15.181. [IN ADDITION, THE COURT SHALL ORDER, AND A
4 PERSON CONVICTED UNDER THIS SECTION SHALL UNDERTAKE, FOR A TERM SPEC-
5 IFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITA-
6 TION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED
7 UNDER (h) OF THIS SECTION, FINDS APPROPRIATE.] The sentence imposed
8 by the court under this subsection shall run consecutively with any
9 other sentence of imprisonment imposed on the committed person.

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

11 (1) The court shall order a person convicted under this section
12 to satisfy the screening, evaluation, referral, and program require-
13 ments of an agency authorized by the court to make referrals for
14 rehabilitative treatment or to provide rehabilitative treatment.

15 (m) A program of inpatient treatment may be required by the
16 authorized agency under (1) of this section only if authorized in the
17 judgment, and may not exceed the maximum term of inpatient treatment
18 specified in the judgment. A person who has been referred for inpa-
19 tient treatment under this subsection may make a written request to
20 the sentencing court asking the court to review the referral. The
21 request for review shall be made within seven days of the agency's
22 referral, and shall specifically set out the grounds upon which the
23 request for review is based. The court may order a hearing on the
24 request for review.

25 (n) If a person fails to satisfy the requirements of an au-
26 thorized agency under (m) 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. 10. AS 33.16.220(a) is amended to read:

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

6 (1) engages in [FOR] conduct in violation of AS 33.16.-
7 150(a) or (b); or

8 (2) has violated an order of the court to participate in or
9 comply with the treatment plan of a rehabilitation program under
10 AS 12.55.015(a)(10).

11 * Sec. 11. AS 33.30.011 is amended to read:

12 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

13 (1) establish, maintain, operate, and control correctional
14 facilities suitable for the custody, care, and discipline of persons
15 charged or convicted of offenses against the state or held under
16 authority of state law;

17 (2) classify prisoners;

18 (3) for persons committed to the custody of the commis-
19 sioner, establish programs, including furlough programs that are
20 reasonably calculated to

21 (A) protect the public;

22 (B) maintain health;

23 (C) create or improve occupational skills;

24 (D) enhance educational qualifications;

25 (E) support court-ordered restitution; and

26 (F) otherwise provide for the rehabilitation and
27 reformation of prisoners, facilitating their reintegration into
28 society;

29 (4) provide necessary medical services for prisoners in

1 correctional facilities or who are committed by a court to the custody
2 of the commissioner, including examinations for communicable and
3 infectious diseases; and

4 (5) provide necessary psychological or psychiatric treat-
5 ment if a physician or other health care provider, exercising ordinary
6 skill and care at the time of observation, concludes that

7 (A) a prisoner exhibits symptoms of a serious disease
8 or injury that is curable or may be substantially alleviated; and

9 (B) the potential for harm to the prisoner by reason
10 of delay or denial of care is substantial;

11 (6) establish minimum standards for sex offender treatment
12 programs offered to persons who are committed to the custody of the
13 commissioner.

14 * Sec. 12. AS 12.55.015(d) is repealed.

15 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).