

SB

54

<TARGET><BILL>SB 54</BILL><SUBJECT>SB
54</SUBJECT><COMM>SJUD30</COMM></TARGET>

30th Alaska State Legislature

Judiciary Committee
Chairman
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State Affairs Committee
Education Committee
Select Committee on Legislative
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Joint Armed Services Committee



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SENATE BILL 54 **SPONSOR STATEMENT** Omnibus Crime/Corrections

Senate Bill 54 makes substantive revisions to the criminal justice reform package passed by the legislature in 2016, pursuant to recommendations made by the Alaska Criminal Justice Commission.

The three major areas to be addressed: C-felony penalties, misdemeanor penalties, and violations of conditions of release.

The Commission's recommendations were based on feedback from members of law enforcement, prosecutors, and the public. This feedback reflected factors the Commission has been directed to consider in making recommendations, including the need to confine offenders to prevent harm to the public, the effect of sentencing in deterring offenders, and the need to express community condemnation.

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SENATE BILL 54

SECTIONAL SUMMARY

Crime and Sentencing

Version A

Section 1

AS 11.56.757(a) – Violation of condition of release.

Changes the offense of violation of condition of release to a crime.

Section 2

AS 11.56.757(b) – Violation of condition of release.

Changes the offense of violation of condition of release to a crime (class B misdemeanor).

Section 3

AS 11.66.130(a) – Sex trafficking in the third degree.

Distinguishes between people who are profiting and promoting a place of prostitution and people who are participating in a cooperative of independent sex workers and engaging in prostitution without receiving compensation or promoting prostitution.

Section 4

AS 11.66.135(a) – Sex trafficking in the fourth degree.

Distinguishes between a person engaging in conduct that institutes, aids, or facilitates prostitution, and a person who is also receiving compensation for prostitution services rendered by another.

Section 5

AS 12.55.125(e) – Sentences of imprisonment for felonies.

Increases the presumptive sentence for a class C felony that is a first felony conviction to up to 90 days imprisonment and up to 18 months suspended imprisonment.

Section 6

AS 12.55.125 – Sentences of imprisonment for felonies.

Requires the court to impose a term of probation for felony sex offenders.

Section 7

AS 12.55.135(a) – Sentences of imprisonment for misdemeanors.

A person convicted of an A misdemeanor may be sentenced up to 60 days if the defendant has one previous conviction for a similar offense.

Section 8

AS 12.55.135(b) – Sentences of imprisonment for misdemeanors.

A person convicted of violation of conditions of release may be sentenced to up to 5 days of imprisonment.

Section 9

AS 12.55.135(l) – Sentences of imprisonment for misdemeanors.

A person convicted of theft in the fourth degree (and similar offenses) may be sentenced up to 10 days of active imprisonment for third and subsequent convictions.

Section 10

AS 12.63.100(6) – Definitions.

Updates the definition of “sex offense” to conform to amendments to sex trafficking in the third and fourth degrees.

Section 11

AS 18.67.101 – Incidents and offenses to which this chapter applies.

Updating the offenses for which the Violent Crimes Compensation Board may order payment of compensation to conform to amendments to sex trafficking in the third and fourth degrees.

Section 12

AS 29.25.070(g) – Penalties.

Clarifies that limitations of municipal authority to impose punishments does not apply to non-criminal offenses.

Section 13

AS 33.07.010 – Pretrial services program; establishment.

Limits the assessment of pretrial risk to defendants brought into custody, or any defendant if requested by prosecution.

Section 14

AS 34.03.360(10) – Definitions.

Updates the definition of “illegal activity involving a place of prostitution” to conform to amendments to sex trafficking in the third and fourth degrees.

Section 15

Repealed statutes

Repeals duplicative felony DUI sentencing provisions and certain sex trafficking statutes.

Section 16

Uncodified law

This section contains applicability provisions.

Section 17

Effective date

Section 13 takes effect January 1, 2018.

Section 18

Effective date

Other than section 17, this bill takes effect immediately.

RECOMMENDATIONS TO THE ALASKA STATE LEGISLATURE BY THE ALASKA CRIMINAL JUSTICE COMMISSION

**Recommendations 1-14 2017, Approved January 19 and January 27, 2017.
Submitted to the Legislature on January 30, 2017.**

The following recommendations from the Alaska Criminal Justice Commission are the result of discussions at the Commission's plenary meetings on January 19 and 27, 2017. At these meetings, the Commission solicited and considered information and views from a variety of constituencies to represent the broad spectrum of views that exist with respect to possible approaches to sentencing and administration of justice in the state.

When the Commission was created in 2014, the Legislature directed the Commission to make recommendations based on, among other things:

- The need to rehabilitate the offender;
- The sufficiency of state resources to administer the criminal justice system;
- The effect of state laws and practices on the rate of recidivism; and
- Peer-reviewed and data-driven research.¹

Since the Commission began operation, it agreed to forward only recommendations that were backed by data and were evidence-based. In 2015, the legislature further directed the Commission to forward recommendations that would either (1) avert all future prison growth, (2) avert all future prison growth and reduce the current prison population by 15%, or (3) avert all future prison growth and reduce the current prison population by 25%.

As part of SB91, the Legislature tasked the Commission with monitoring the efficacy of the reforms using data collected from certain state agencies. Because SB 91 was enacted in July of 2016, and parts of the bill will not go into effect until January 2018, the Commission does not yet have enough data to assess whether SB 91 is achieving its intended outcomes. Thus, the recommendations below are not based on data-driven research and they are not based on the data that the Legislature instructed the Commission to collect and analyze. Moreover, they are not expected to reduce the prison population, reduce recidivism, or reduce the criminal justice system's usage of state resources.

Rather, the recommendations below are based on feedback from members of law enforcement, prosecutors, and the public. This feedback reflected other factors the Commission has been directed to consider in making recommendations, including:

- The need to confine offenders to prevent harm to the public;
- The effect of sentencing in deterring offenders; and
- The need to express community condemnation of crime.²

¹ See AS 44.19.646. This statute was enacted in 2014 as part of SB 64.

² *Id.*

The Commission recognizes that the factors it has been instructed to consider in formulating its recommendations often work in tension. Not all of the recommendations below received unanimous support from the Commission. If a recommendation did not receive unanimous support from the Commission, the recommendation includes an explanation of the concerns of the Commissioners who did not support that recommendation.

Recommendation 1-2017: Return VCOR to Misdemeanor Status

In 2015, the Commission recommended that the crime of Violation of Conditions of Release (VCOR) be downgraded to a non-criminal violation, punishable by a fine. This recommendation was enacted in SB 91.³ Implementation of this provision did not immediately occur as the Commission intended. The Commission's recommendation was that those who violate conditions of their release would be arrested and held in jail until the judge in their underlying case could review bail. While SB 91 included an arrest provision so that defendants who violated conditions of their release could be arrested,⁴ some of those arrested were not being held in jail—they were being released as soon as they were brought to jail.

The Alaska Court System has now altered its bail forms to order defendants held in jail if they violate the conditions of their release; however, the Commission has heard anecdotal reports that this solution is not working universally. The Commission therefore recommends that the legislature enact a statute that would return VCOR to a crime. Specifically, **the Commission recommends that Violation of Conditions of Release become a Class B Misdemeanor, punishable by up to 5 days in jail.**

This recommendation did not receive unanimous approval from the Commission. Those who were in favor of this recommendation noted that this will ensure that offenders will be held in jail until they get to a bail hearing in front of the judge in their underlying case. That judge will then be familiar with the case and will be able to re-set bail.

Those who opposed this recommendation voiced concern that it was an unnecessary criminalization of conduct to solve an administrative issue, that it would simply stack crimes for defendants and increase unnecessary use of costly jail beds, and that the solution from the Alaska Court System (the change to the bail form) should be given time to work. There was also a concern from victims that if VCOR were to become a separate crime once again, it may encourage the practice of allowing defendants to plead to VCOR in exchange for dismissal of the underlying charge. The Commission does not condone this practice and may revisit this topic if it finds that this practice is occurring.

Recommendation 2-2017: Increase penalties for repeat Theft 4 offenders.

Theft in the fourth degree (Theft 4) penalizes simple theft (theft that does not involve burglary or violence) of items or services valued at \$250 or less. Theft 4 is a Class B misdemeanor, and SB 91 limited the penalties for this offense: for a defendant's first and second convictions of this offense, no jail time may be imposed (though fines and restitution may be imposed). For a defendant's third or subsequent

³ 2016 SLA Ch. 36 ("SB 91") §§ 29-30.

⁴ SB 91 § 51.

conviction of this offense, the maximum terms is 5 days suspended with 6 months of probation.⁵ The Commission's original recommendation to limit jail time for this offense was based on information from the Department of Corrections showing that these low-level offenders stole mostly toiletries and alcohol, and they accounted for a significant number of prison beds in a year.⁶

The Commission has received a good deal of feedback about this provision of SB 91. Business owners, law enforcement officers, and prosecutors feel this provision has emboldened some offenders to commit more lower-value theft crimes. They believe some prospect of jail time provides deterrence and reflects community condemnation. **The Commission therefore recommends that for third-time Theft 4 offenders, this offense should be punishable by up to 10 days in jail.** (This third-time offense would remain a Class B Misdemeanor).

This recommendation did not receive unanimous approval from the Commission. Those who voted against the recommendation believed it did not go far enough and would have preferred a recommendation to re-enact a statute (which was repealed by SB 91⁷) that made an offender's third Theft 4 within five years a Class A misdemeanor rather than a Class B misdemeanor.

The Commissioners voting in favor of this provision thought it would be a way to address the community's concerns regarding theft crime. The Commission did not have any data that this recommendation would prevent these types of theft. Studies of Alaskan offenders sentenced prior to SB91 show that misdemeanor property offenders such as these have historically recidivated at very high rates. There is no evidence to support the notion that rates of petty theft are related to prison sentences. Rates of property crime in Alaska have been rising for the past two to three years—a trend that began before SB 91 was introduced in the Legislature.⁸

While debating this recommendation, some Commissioners noted that for offenders struggling with homelessness and behavioral health disorders, jail is not a deterrent, but rather a housing option: some offenders will commit crimes to be assured a warm place to sleep at night, particularly during the winter. It was also noted that some offenders who are addicts commit low-level thefts to obtain resources to pay for their drug of choice.

All Commissioners agreed that further solutions are needed to address the problem of persistent low-level offending, including more options to treat mental illness, addiction, and chronic homelessness. Robust and comprehensive solutions are needed to get at the root causes of theft crime.

⁵ SB 91 § 93. When a sentence is suspended, it means that the offender will not serve the term "up front"; the offender will be placed on probation and will serve this time only if the offender commits a major violation of the conditions of probation or commits a new crime.

⁶ In 2014, 324 offenders were admitted to prison for Theft 4, and these offenders spent an average of 23 days behind bars after being convicted.

⁷ SB 91 § 179. (Referring to former AS 11.46.140(a)(3).)

⁸ The 30-year trend lines for Part I property crimes in Alaska and in Anchorage are downward; however, the shorter-term trend for these property crimes - between 2011 and 2015 - is upward in Anchorage, and upward to a lesser degree statewide.

Recommendation 3-2017: Allow municipalities to set different non-incarceration punishments for non-criminal offenses that have state equivalents.

In order to ensure that state statutes and municipal code provisions were not working at cross purposes, SB 91 limited the amount of jail time a municipality could impose for a municipal offense that has a state equivalent to the amount of jail time called for in state statute.⁹ In other words, state and municipal crimes that are equivalent must have equivalent punishments.

The provision as currently enacted, however, has been interpreted to apply not just to prison terms but to all forms of punishment, including fines for non-criminal offenses such as speeding. Municipalities have expressed concern that fines for equivalent state offenses are much lower than fines for municipal offenses, and this has been a significant change for the municipalities. **The Commission therefore recommends that the “binding provision” of SB 91 be amended so that it does not apply to non-criminal offenses found in municipal codes and regulations.** This recommendation passed unanimously.

Recommendation 4-2017: Revise the sex trafficking statute.

The provisions of SB 91 that altered the sex trafficking statutes were not based on any recommendation from the Commission. The legislative history suggests these provisions were intended to ensure that sex workers simply working together—not exploiting one another—could not be prosecuted for trafficking each other or trafficking themselves.¹⁰ However, as passed, the provisions could be read so that a person who might otherwise be found guilty of sex trafficking (i.e., someone receiving money for the sex work performed by others) could avoid prosecution if that person engaged in sex work personally (i.e., they also received money for sex work performed themselves.) **The Commission therefore recommends repealing sections 39 and 40 of SB 91 and amending existing statutes as follows:**

- **AS 11.66.130(a):** After “a person” insert “receiving compensation for prostitution services rendered by another”
- **AS 11.66.130(a)(3):** Delete “as other than a prostitute receiving compensation for personally rendered prostitution services,”
- **AS 11.66.135(a):** After “a person” insert “receiving compensation for prostitution services rendered by another”

The Commission also recommends that the Legislature define the term “compensation” as used in these statutes. “Compensation” should be defined so that it applies only to compensation for services performed and does not include things like shared rent, shared gas money, or shared hotel fees in instances where sex workers are working together to split costs.

⁹ SB 91 §113.

¹⁰ SB 91 §§ 39 and 40.

Recommendation 5-2017: Enact a 0-90 day presumptive sentencing range for first-time Class C Felonies.

SB 91 provides that Class C Felonies are punishable by a suspended term of 0-18 months for first-felony offenders.¹¹ This means that a first-time felony offender convicted of a Class C Felony is presumed to receive a probationary sentence that would include some amount of suspended time. A person receiving a probationary sentence with suspended time does not spend any time in jail up front, but is subject to jail time if they violate conditions of probation.

The purpose of this provision was to provide community supervision for first-time offenders to (1) allow the offender to maintain pro-social ties to the community and (2) ensure that the offender would comply with conditions of probation such as remaining sober, not committing new crimes, and paying fines and restitution to victims. If the offender did not succeed with these conditions, that offender could be made to serve part or all of the suspended time in jail.

The Commission heard numerous concerns about this provision in particular. Prosecutors felt that some violent Class C Felonies warranted jail time for a first-time offense, and were concerned that there was not enough of an incentive to encourage these offenders to get into treatment. Members of law enforcement were frustrated that this provision was overbroad and did not provide for an offender's immediate incarceration if the offender posed a danger to the community. Members of the community were offended by this provision and felt that it did not express community condemnation strongly enough.

Prosecutors and law enforcement preferred a provision that would allow a judge discretion in sentencing and would provide for immediate incarceration if necessary. They thought that while there were some cases where a probationary term was warranted for a first-time offender, the judge should be able to impose jail time in some instances, particularly cases involving violence.

The Commission therefore recommends that Class C Felonies carry a presumptive jail term of 0-90 days for first-felony offenders. The Commission also recommends retaining the provision allowing up to 18 months of suspended time.

This recommendation did not pass unanimously, and was the subject of considerable debate among the Commissioners. Those who voted against it would have preferred a much stronger provision; another proposal was to expand the sentencing range to 0-18 months for all class C felonies. The Attorney General was willing to compromise at 0-12 months for violent offenders and to 0-6 months for non-violent offenders.

This Commissioners debated the amount of time that might incentivize an offender to get treatment—some Commissioners thought that first-time felony offenders would not need long treatment programs (in the range of 60-90 days) while other Commissioners thought that some first-felony offenders would need longer treatment programs and a greater incentive to complete that treatment.

¹¹ SB 91 § 90. A second-time felony offender would receive a sentence of 1-3 years to serve if convicted of a Class C. A third-time (and subsequent) felony offender would receive a sentence of 2-5 years to serve if convicted of a Class C.

Commissioners in favor of this recommendation noted that this sentence could be enhanced (up to 5 years) if the judge or jury found certain aggravating factors.

Commissioners in favor of a shorter presumptive term were concerned that a longer term would constitute a more significant reversal of the intent behind SB 91, which was to supervise first time offenders in the community to encourage their rehabilitation and reduce the recidivism rate. The Commission relied on research showing that for first-time offenders, time in prison can actually make the offender more likely to recidivate after leaving prison. The Commission did not have any data or empirical evidence to show that a term of 0-90 days would reduce recidivism; this recommendation will almost certainly increase the prison population. However, Commissioners noted the strong public outcry around this provision and wanted to meet the community's standards for condemnation of crime.

Recommendation 6-2017: Enact an aggravator for Class A Misdemeanors for defendants who have a prior conviction for similar conduct.

SB 91 enacted a presumptive sentence range of 0-30 days for most Class A Misdemeanors.¹² This sentence can be increased up to 1 year (the previous limit) in some cases: for certain violent offenses and sex offenses, for cases where the conduct was among the most serious conduct included in the definition of the offense, and for cases where the defendant has two or more criminal convictions for similar conduct.

Prosecutors voiced concern over the provision allowing for a longer sentence for defendants who have past convictions for similar conduct, because it requires proof of at least two prior convictions. This proved to be a particular problem for second-time DUI (and Refusal) offenders. The minimum jail term for a second-time DUI/Refusal offender is 20 days; with a maximum of 30 days for a Class A Misdemeanor, that leaves only 10 days to suspend as a method of enforcing conditions of probation.

The Department of Law and the Department of Public Safety believe that judges should have the option for an increased penalty for defendants who have *one* prior conviction for similar conduct. This would allow a judge to impose more suspended time for second-time offenders and provide a greater incentive for defendants to get into treatment.

The Commission therefore recommends enacting an additional aggravating factor for Class A Misdemeanors for defendants who have one prior conviction for similar conduct. This aggravating factor would allow a judge to impose a sentence of up to **60 days**. This recommendation passed unanimously.

Recommendation 7-2017: Clarify that ASAP is available for Minor Consuming Alcohol.

The Alcohol Safety Action Program provides monitoring for misdemeanor DUI and Refusal cases to ensure that defendants are going to court-ordered treatment. In 2015 the Commission found that the ASAP program was overextended, and recommended that the program either be more robustly funded or be restricted only to DUI and Refusal offenders (rather than all offenders with alcohol-related

¹² SB 91 § 91.

convictions, as was the case). Accordingly, SB 91 limits ASAP to offenders who have been convicted of DUI and Refusal offenses.¹³

SB 165, also passed in 2016, made Minor Consuming Alcohol a violation (rather than a criminal offense). It also provided that the fine for this violation may be reduced if the defendant goes through ASAP. It therefore contemplates that ASAP will be available for these non-DUI offenders. This provision is in conflict with the above-referenced provisions in SB 91. **The Commission therefore recommends that ASAP be available for people cited for Minor Consuming Alcohol.**

Recommendation 8-2017: Enact a provision requiring mandatory probation for sex offenders.

In an apparent oversight, SB 91 eliminated the statutory provision requiring sex offenders to serve a period of probation. **The Commission therefore recommends that the Legislature enact a provision requiring sex offenders to serve a period of probation as part of their sentence.**

Recommendation 9-2017: Clarify the length of probation allowed for Theft 4.

SB 91 provides that an offender's third Theft 4 conviction be punishable by up to 5 days of suspended jail time and 6 months of probation.¹⁴ The law is silent, however on the allowable probationary term for a first or second Theft 4 conviction. (Theft 4 is a Class B Misdemeanor; misdemeanors generally carry a maximum probation term of 1 year.¹⁵) **The Commission therefore recommends that the Legislature clarify the allowable probationary period for first and second Theft 4 convictions.** The Commission believes that a probationary term is appropriate for these offenses.

Recommendation 10-2017: Require victim notification only if practical.

SB 91 requires the court, at the time of sentencing, to provide the victim with information on where to find information about the defendant's sentence or release, and the potential for a defendant's release.¹⁶ However, not all victims want to participate in sentencing, and the court will not always have current contact information for victims. Even if the victim has an address on file with the court, the victim may not want to automatically be sent information which would remind the victim of the crime. **The Commission therefore recommends that AS 12.55.011 be amended as follows:**

"(b) At the time of sentencing, the court shall, if practical, provide the victim with a form..."

Recommendation 11-2017: Felony DUI sentencing provisions should be in one statute.

Section 90 of SB 91 amends the provision in Title 12 that sets the presumptive sentencing ranges for Class C felonies. This section of SB 91 also includes sentencing ranges for Felony DUI and Refusal. In Title 28, where the statutes creating the offenses of Felony DUI and Refusal are found, those offenses are

¹³ SB 91 §§ 170-173.

¹⁴ SB 91 § 93.

¹⁵ SB 91 § 79.

¹⁶ SB 91 § 65.

given a mandatory minimum, not a presumptive range. Essentially there are two punishment provisions for the same offenses in two different statutes, which creates confusion. **The Commission therefore recommends that the Legislature place the penalty provision for Felony DUI and Refusal sentences in one statute only.**

Recommendation 12-2017: Clarify who will be assessed by Pre-Trial Services.

Section 117 of SB 91 states: "The commissioner shall establish and administer a pretrial services program that provides a pretrial risk assessment for *all* defendants, recommendations to the court concerning pretrial release decisions, and supervision of defendants released while awaiting trial as ordered by the court"(emphasis added).

The bill therefore contemplates that "all" defendants should be assessed. However, the purpose of the Pretrial Assessment Tool is to assist judges and pretrial services officers with the decision to release a defendant before trial. Not all defendants will be in custody pretrial; some will be issued citations and a summons to appear before the court. Typically these defendants will be low risk (because the officer who issued them the citation likely believed the person to be low risk, and did not arrest the person). **The Commission therefore recommends that AS 33.05.080 be amended as follows:**

"The commissioner shall establish and administer a pretrial services program that provides a pretrial risk assessment for all defendants brought into custody or at the request of a prosecutor at the next hearing or arraignment. [,] The pretrial services program shall make recommendations to the court concerning pretrial release decisions, and provide supervision of defendants released while awaiting trial as ordered by the court."

Recommendation 13-2017: Fix a drafting error regarding victim notification.

SB 91 currently contains the following provisions:

- Section 122: **33.16.089. Eligibility for administrative parole:** "A prisoner convicted of a misdemeanor or a class B or C felony that is not a sex offense as defined in AS12.63.100 or an offense under AS 11.41."
- Section 132: **33.16.120(h)** "A victim who has a right to notice under (a) of this section may request a hearing before a prisoner is released on administrative parole under 33.16.089."
- Section (a) of AS 33.16.120 provides that a victim of a crime against a person (found in 11.41) or a victims of Arson in the first degree (a Class A felony) has a right to request notice of a hearing for *discretionary* parole.

Therefore, prisoners convicted of a Class A felony or a crime against a person (found in 11.41) will *not* be eligible for administrative parole. Section 132 of SB 91, however, provides for a victim's right to request a notice of a hearing for administrative parole in these cases—i.e. to request notice of a hearing that will never happen because this class of offender is not eligible for administrative parole. **The Commission therefore recommends that section 132 be repealed.**

Recommendation 14-2017: Enact the following technical corrections to SB 91.

The Commission considers the following recommendations purely technical; they are designed to fix drafting or oversight errors.

- For the crimes of issuing a bad check, fraudulent use of an access device, and defrauding creditors, SB 91 pegged the threshold amount for a B-level felony (\$25,000) to inflation.¹⁷ **The Commission recommends removing this inflation adjustment for the B-felony amounts.** This change would mean that the B-level amount would remain at \$25,000 absent further legislative action.
- SB 91 changed driving on a suspended license to an infraction in most cases. However, driving without a valid license (arguably, less serious conduct than driving on a suspended license) continues to be a misdemeanor. **The Commission recommends that the crime of driving without a valid license also be reduced to an infraction** to be consistent with the changes made for driving with a suspended/revoked license.
- SB 91 Section 47; page 25; line 13: **The Commission recommends deleting the reference to “(B)” in “11.71.060(a)(2)(B).”** This change limits charging MICS 4 for possession of a compound containing a schedule VIA drug (similar to marijuana) to an ounce or more.
- **The Commission recommends enacting the following changes regarding Suspended Entry of Judgment (SEJ),** which will clarify that the crimes for which SEJ may not be used are the current crimes charged, and will add SEJ to the list of authorized sentences.
 - SB 91 Sec. 77; page 44; line 19: Delete “is convicted of” and insert “is charged with”
 - SB 91 Sec. 77; page 44; line 23: Delete “is convicted” and insert “is charged”
 - SB 91 Sec. 77; page 44; line 29: Delete “is convicted of” and insert “is charged with”
 - SB 91 Sec. 77; page 45; line 8: Delete “has been convicted of” and insert “is charged with”
 - SB 91 Sec. 77; page 45; line 11: Delete second “of” and after “original probation,” and insert “was imposed,”
 - AS 12.55.015(a)(8): Insert “suspend entry of judgement under AS 12.55.078;”
- Sending an explicit image of a minor to another person (a B misdemeanor AS 11.61.116(c)(1)) has an enhanced penalty under SB 91 of up to 90 days.¹⁸ However, posting an explicit image of a minor to a publically available website is limited to 30 days (an A misdemeanor pursuant to AS 11.61.116(c)(2)). **The Commission therefore recommends adding AS 11.61.116(c)(2) to AS 12.55.135(a)(1)(F) to align penalties for posting and sending explicit images of a minor.**
- **The Commission recommends adding the following language to SB 91 Sec. 79; page 45; line 17:** After “AS 11” insert “not listed in (1) of this subsection;”. This will clarify that the maximum probation term for felony sex offenses is 15 years, while all other unclassified felonies have a maximum probation term of 10 years.

¹⁷ SB91 §§ 12, 13, 23.

¹⁸ SB 91 § 91.

- **The Commission recommends adding the following language to Sec. 164; page 105; line 7:** After “AS 33.05.020(h)” insert “or 33.16.270”. SB 91 requires DOC to provide the Commission with data on earned compliance credits for probationers; this change would extend that requirement to parolees as well.
- **The Commission recommends amending sections 148 and 151 of SB 91 for clarity as to their applicability.** Section 185 of SB 91 states that sections 148 and 151 apply to parole granted before, on, or after the effective date of those sections. Section 190 states that the effective date of sections 148 and 151 is January 1, 2017.
 - Section 148 adds a new tolling provision for parolees who abscond. It also provides that the board may not extend the period of supervision beyond the maximum release date calculated by the department on the parolee’s original sentence. It therefore creates a different scheme for calculating an offender’s parole, and it would be difficult to apply this section to parole calculated under the previous scheme.
 - The Department of Corrections would like this language added to section 148: “The provisions of this section shall not be construed as invalidating any decision of the Board, issued prior to 1/1/17, which extended the period of supervision beyond the maximum release date on the original sentence.”
 - The Department also would like similar language added to section 151, which provides for earned compliance credits for parolees. This also requires a new time accounting system that would not apply to parole calculated under the previous scheme.

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SENATE BILL 54 **SUMMARY OF CHANGES** Crime and Sentencing Version O to Version R

Section 6

AS 12.55.125(e) – Sentences of imprisonment for felonies.

Increases the presumptive range for C-felonies that are a first conviction from 0 to 120 days to 0 to 1 year.

Section 10

AS 12.55.135(l) – Sentences of imprisonment for misdemeanors.

Provides for up to 5 days of active imprisonment for a second conviction of Theft in the Fourth Degree (or similar offenses), rather than no active time for a second conviction. Up to 5 days of suspended time may be imposed for a first conviction.

Section 18

AS 33.07.030(a) – Duties of pretrial services officers.

Former section 18 is deleted. It required the Department of Corrections to provide the result of the pretrial risk assessment to the defendant and prosecutor.

CS FOR SENATE BILL NO. 54(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR COGHILL

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to crime and criminal law; relating to violation of condition of release;**
2 **relating to sex trafficking; relating to sentencing; relating to probation; relating to**
3 **driving without a license; relating to the pretrial services program; and providing for an**
4 **effective date."**

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

6 *** Section 1.** AS 11.56.757(a) is amended to read:

7 (a) A person commits the crime [OFFENSE] of violation of condition of
8 release if the person

9 (1) has been charged with a crime or convicted of a crime;

10 (2) has been released under AS 12.30; and

11 (3) violates a condition of release imposed by a judicial officer under
12 AS 12.30, other than the requirement to appear as ordered by a judicial officer.

13 *** Sec. 2.** AS 11.56.757(b) is amended to read:

14 (b) Violation of condition of release is a class B misdemeanor [VIOLATION

1 PUNISHABLE BY A FINE OF UP TO \$1,000].

2 * **Sec. 3.** AS 11.66.130(a) is amended to read:

3 (a) A person commits the crime of sex trafficking in the third degree if [,
4 WITH INTENT TO PROMOTE PROSTITUTION,] the person

5 (1) receives compensation for prostitution services rendered by
6 another; and

7 (2) with the intent to promote prostitution,

8 (A) manages, supervises, controls, or owns, either alone or in
9 association with others, a place of prostitution;

10 (B) [(2)] as other than a patron of a prostitute, induces or
11 causes another person who is 20 years of age or older to engage in prostitution;

12 (C) [(3) AS OTHER THAN A PROSTITUTE RECEIVING
13 COMPENSATION FOR PERSONALLY RENDERED PROSTITUTION
14 SERVICES,] receives or agrees to receive money or other property under an
15 agreement or understanding that the money or other property is derived from
16 prostitution; or

17 (D) [(4)] engages in conduct that institutes, aids, or facilitates a
18 prostitution enterprise.

19 * **Sec. 4.** AS 11.66.135(a) is amended to read:

20 (a) A person commits the crime of sex trafficking in the fourth degree if the
21 person

22 (1) receives compensation for prostitution services rendered by
23 another; and

24 (2) engages in conduct that institutes, aids, or facilitates prostitution
25 under circumstances not proscribed under AS 11.66.130(a)(2)(D)
26 [AS 11.66.130(a)(4)].

27 * **Sec. 5.** AS 11.66.150 is amended by adding a new paragraph to read:

28 (4) "compensation" does not include any payment for reasonably
29 apportioned shared expenses.

30 * **Sec. 6.** AS 12.55.125(e) is amended to read:

31 (e) Except as provided in (i) of this section, a defendant convicted of a class C

1 felony may be sentenced to a definite term of imprisonment of not more than five
2 years, and shall be sentenced to a definite term within the following presumptive
3 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

4 (1) if the offense is a first felony conviction and does not involve
5 circumstances described in (4) of this subsection, [PROBATION, WITH A
6 SUSPENDED TERM OF IMPRISONMENT OF] zero to one year [18 MONTHS]; a
7 defendant sentenced under this paragraph may, if the court finds it appropriate, be
8 granted a suspended imposition of sentence under AS 12.55.085;

9 (2) if the offense is a second felony conviction, one to three years;

10 (3) if the offense is a third felony conviction, two to five years;

11 (4) if the offense is a first felony conviction, and the defendant violated

12 (A) AS 08.54.720(a)(15), one to two years;

13 (B) AS 28.35.030(n)(1)(A) or 28.35.032(p)(1)(A), 120 days to
14 239 days;

15 (C) AS 28.35.030(n)(1)(B) or 28.35.032(p)(1)(B), 240 days to
16 359 days;

17 (D) AS 28.35.030(n)(1)(C) or 23.35.032(p)(1)(C), 360 days to
18 two years.

19 * **Sec. 7.** AS 12.55.125 is amended by adding a new subsection to read:

20 (q) Other than for convictions subject to a mandatory 99-year sentence, the
21 court shall impose, in addition to an active term of imprisonment imposed under (i) of
22 this section, a minimum period of (1) suspended imprisonment of five years and a
23 minimum period of probation supervision of 15 years for conviction of an unclassified
24 felony, (2) suspended imprisonment of three years and a minimum period of probation
25 supervision of 10 years for conviction of a class A or class B felony, or (3) suspended
26 imprisonment of two years and a minimum period of probation supervision of five
27 years for conviction of a class C felony. The period of probation is in addition to any
28 sentence received under (i) of this section.

29 * **Sec. 8.** AS 12.55.135(a) is amended to read:

30 (a) A defendant convicted of a class A misdemeanor may be sentenced to a
31 definite term of imprisonment of not more than

1 (1) one year, if the

2 (A) conviction is for a crime with a mandatory minimum term
3 of 30 days or more of active imprisonment;

4 (B) trier of fact finds the aggravating factor that the conduct
5 constituting the offense was among the most serious conduct included in the
6 definition of the offense;

7 (C) defendant has previously been convicted two or more
8 times [PAST CRIMINAL CONVICTIONS] for conduct violative of criminal
9 laws, punishable as felonies or misdemeanors, similar in nature to the offense
10 for which the defendant is being sentenced;

11 (D) conviction is for an assault in the fourth degree under
12 AS 11.41.230; or

13 (E) conviction is for a violation of

14 (i) AS 11.41.427;

15 (ii) AS 11.41.440;

16 (iii) AS 11.41.460, if the indecent exposure is before a
17 person under 16 years of age; [OR]

18 (iv) AS 11.61.116(c)(2); or

19 (v) AS 11.61.118(a)(2);

20 (2) 60 days, if the defendant has one previous conviction for
21 conduct violative of criminal laws, punishable as felonies or misdemeanors,
22 similar in nature to the offense for which the defendant is being sentenced;

23 (3) 30 days.

24 * Sec. 9. AS 12.55.135(b) is amended to read:

25 (b) A defendant convicted of a class B misdemeanor may be sentenced to a
26 definite term of imprisonment of not more than

27 (1) 10 days unless otherwise specified in the provision of law defining
28 the offense or in this section;

29 (2) 90 days if the conviction is for a violation of

30 (A) AS 11.61.116(c)(1) and the person is 21 years of age or
31 older; or

1 (B) AS 11.61.120(a)(6) and the person is 21 years of age or
2 older; or

3 **(3) five days if the conviction is for a violation of AS 11.56.757.**

4 * Sec. 10. AS 12.55.135(l) is amended to read:

5 (l) A court sentencing a person convicted of theft in the fourth degree under
6 AS 11.46.150, concealment of merchandise under AS 11.46.220(c)(3), removal of
7 identification marks under AS 11.46.260(b)(3), unlawful possession under
8 AS 11.46.270(b)(3), issuing a bad check under AS 11.46.280(d)(4), or criminal
9 simulation under AS 11.46.530(b)(3) may not impose

10 (1) a sentence of more than 10 [FIVE] days of active [SUSPENDED]
11 imprisonment and a term of probation of more than six months if the person has
12 previously been convicted two or more times of an offense under AS 11.46.110 -
13 11.46.220, 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of
14 this or another jurisdiction with substantially similar elements; [OR]

15 (2) a sentence of more than five days of active [OR SUSPENDED]
16 imprisonment and a term of probation of more than six months if the person has
17 [NOT BEEN PREVIOUSLY CONVICTED, OR HAS] previously been convicted
18 once [,] of an offense under AS 11.46.110 - 11.46.220, 11.46.260 - 11.46.290,
19 11.46.360 or 11.46.365, or a law or ordinance of this or another jurisdiction with
20 substantially similar elements; or

21 **(3) a sentence of more than five days of suspended imprisonment**
22 **and a term of probation of more than six months if the person has not been**
23 **previously convicted of an offense under AS 11.46.110 - 11.46.220, 11.46.260 -**
24 **11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of this or another**
25 **jurisdiction with substantially similar elements.**

26 * Sec. 11. AS 12.55.135(p) is amended to read:

27 (p) If the state seeks to establish an aggravating factor at sentencing

28 (1) under (a)(1)(C) or (a)(2) of this section, written notice must be
29 served on the opposing party and filed with the court not later than 10 days before the
30 date set for imposition of sentence; the aggravating factor in (a)(1)(C) or (a)(2) of this
31 section must be established by clear and convincing evidence before the court sitting

1 without a jury; all findings must be set out with specificity;

2 (2) an aggravating factor under (a)(1)(B) of this section shall be
3 presented to a trial jury under procedures set by the court, unless the defendant waives
4 trial by jury, stipulates to the existence of the factor, or consents to have the factor
5 proven under procedures set out in (1) of this subsection; an aggravating factor
6 presented to a jury is established if proved beyond a reasonable doubt; written notice
7 of the intent to establish an aggravating factor must be served on the defendant and
8 filed with the court

9 (A) not later than 10 days before trial or at a time specified by
10 the court;

11 (B) not later than 48 hours, or at a time specified by the court,
12 if the court instructs the jury about the option to return a verdict for a lesser
13 included offense; or

14 (C) not later than five days before entering a plea that results in
15 a finding of guilt or at a time specified by the court unless the defendant
16 waives the notice requirement.

17 * **Sec. 12.** AS 12.55.145(a) is amended to read:

18 (a) For purposes of considering prior convictions in imposing sentence under

19 (1) AS 12.55.125(c), (d), or (e),

20 (A) a prior conviction may not be considered if a period of 10
21 or more years has elapsed between the date of the defendant's unconditional
22 discharge on the immediately preceding offense and commission of the present
23 offense unless the prior conviction was for an unclassified or class A felony;

24 (B) a conviction in this or another jurisdiction of an offense
25 having elements similar to those of a felony defined as such under Alaska law
26 at the time the offense was committed is considered a prior felony conviction;

27 (C) two or more convictions arising out of a single, continuous
28 criminal episode during which there was no substantial change in the nature of
29 the criminal objective are considered a single conviction unless the defendant
30 was sentenced to consecutive sentences for the crimes; offenses committed
31 while attempting to escape or avoid detection or apprehension after the

1 commission of another offense are not part of the same criminal episode or
2 objective;

3 (2) AS 12.55.125(j),

4 (A) a conviction in this or another jurisdiction of an offense
5 having elements similar to those of a most serious felony is considered a prior
6 most serious felony conviction;

7 (B) commission of and conviction for offenses relied on as
8 prior most serious felony offenses must occur in the following order:
9 conviction for the first offense must occur before commission of the second
10 offense, and conviction for the second offense must occur before commission
11 of the offense for which the defendant is being sentenced;

12 (3) AS 12.55.135(g),

13 (A) a prior conviction may not be considered if a period of five
14 or more years has elapsed between the date of the defendant's unconditional
15 discharge on the immediately preceding offense and commission of the present
16 offense unless the prior conviction was for an unclassified or class A felony;

17 (B) a conviction in this or another jurisdiction of an offense
18 having elements similar to those of a crime against a person or a crime
19 involving domestic violence is considered a prior conviction;

20 (C) two or more convictions arising out of a single, continuous
21 criminal episode during which there was no substantial change in the nature of
22 the criminal objective are considered a single conviction unless the defendant
23 was sentenced to consecutive sentences for the crimes; offenses committed
24 while attempting to escape or avoid detection or apprehension after the
25 commission of another offense are not part of the same criminal episode or
26 objective;

27 (4) AS 12.55.125(i),

28 (A) a conviction in this or another jurisdiction of an offense
29 having elements similar to those of a sexual felony is a prior conviction for a
30 sexual felony;

31 (B) a felony conviction in another jurisdiction making it a

1 crime to commit any lewd and lascivious act upon a child under the age of 16
2 years, with the intent of arousing, appealing to, or gratifying the sexual desires
3 of the defendant or the victim is a prior conviction for a sexual felony;

4 (C) two or more convictions arising out of a single, continuous
5 criminal episode during which there was no substantial change in the nature of
6 the criminal objective are considered a single conviction unless the defendant
7 was sentenced to consecutive sentences for the crimes; offenses committed
8 while attempting to escape or avoid detection or apprehension after the
9 commission of another offense are not part of the same criminal episode or
10 objective;

11 **(5) AS 12.55.135(a),**

12 **(A) a prior conviction may not be considered if a period of**
13 **five or more years has elapsed between the date of the defendant's**
14 **unconditional discharge on the immediately preceding offense and**
15 **commission of the present offense unless the prior conviction was for an**
16 **unclassified or class A felony;**

17 **(B) a conviction in this or another jurisdiction of an offense**
18 **having elements similar to those of a felony or misdemeanor defined as**
19 **such under Alaska law at the time the offense was committed is considered**
20 **a prior conviction;**

21 **(C) two or more convictions arising out of a single,**
22 **continuous criminal episode during which there was no substantial change**
23 **in the nature of the criminal objective are considered a single conviction**
24 **unless the defendant was sentenced to consecutive sentences for the**
25 **crimes; offenses committed while attempting to escape or avoid detection**
26 **or apprehension after the commission of another offense are not part of**
27 **the same criminal episode or objective.**

28 * Sec. 13. AS 12.63.100(6) is amended to read:

29 (6) "sex offense" means

30 (A) a crime under AS 11.41.100(a)(3), or a similar law of
31 another jurisdiction, in which the person committed or attempted to commit a

1 sexual offense, or a similar offense under the laws of the other jurisdiction; in
2 this subparagraph, "sexual offense" has the meaning given in
3 AS 11.41.100(a)(3);

4 (B) a crime under AS 11.41.110(a)(3), or a similar law of
5 another jurisdiction, in which the person committed or attempted to commit
6 one of the following crimes, or a similar law of another jurisdiction:

7 (i) sexual assault in the first degree;

8 (ii) sexual assault in the second degree;

9 (iii) sexual abuse of a minor in the first degree; or

10 (iv) sexual abuse of a minor in the second degree; or

11 (C) a crime, or an attempt, solicitation, or conspiracy to commit
12 a crime, under the following statutes or a similar law of another jurisdiction:

13 (i) AS 11.41.410 - 11.41.438;

14 (ii) AS 11.41.440(a)(2);

15 (iii) AS 11.41.450 - 11.41.458;

16 (iv) AS 11.41.460 if the indecent exposure is before a
17 person under 16 years of age and the offender has a previous conviction
18 for that offense;

19 (v) AS 11.61.125 - 11.61.128;

20 (vi) AS 11.66.110 or 11.66.130(a)(2)(B)
21 [11.66.130(a)(2)] if the person who was induced or caused to engage in
22 prostitution was under 20 years of age at the time of the offense;

23 (vii) former AS 11.15.120, former 11.15.134, or assault
24 with the intent to commit rape under former AS 11.15.160, former
25 AS 11.40.110, or former 11.40.200;

26 (viii) AS 11.61.118(a)(2) if the offender has a previous
27 conviction for that offense; or

28 (ix) AS 11.66.100(a)(2) if the offender is subject to punishment under
29 AS 11.66.100(c);

30 * **Sec. 14.** AS 18.67.101 is amended to read:

31 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The

1 board may order the payment of compensation in accordance with the provisions of
2 this chapter for personal injury or death that resulted from

3 (1) an attempt on the part of the applicant to prevent the commission of
4 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
5 officer to do so, or aiding a victim of crime; or

6 (2) the commission or attempt on the part of one other than the
7 applicant to commit any of the following offenses:

8 (A) murder in any degree;

9 (B) manslaughter;

10 (C) criminally negligent homicide;

11 (D) assault in any degree;

12 (E) kidnapping;

13 (F) sexual assault in any degree;

14 (G) sexual abuse of a minor;

15 (H) robbery in any degree;

16 (I) threats to do bodily harm;

17 (J) driving while under the influence of an alcoholic beverage,
18 inhalant, or controlled substance or another crime resulting from the operation
19 of a motor vehicle, boat, or airplane when the offender is under the influence
20 of an alcoholic beverage, inhalant, or controlled substance;

21 (K) arson in the first degree;

22 (L) sex trafficking in violation of AS 11.66.110 or
23 11.66.130(a)(2)(B) [11.66.130(a)(2)];

24 (M) human trafficking in any degree; or

25 (N) unlawful exploitation of a minor.

26 * **Sec. 15.** AS 28.15.011 is amended by adding a new subsection to read:

27 (d) Violation of (b) of this section is an infraction.

28 * **Sec. 16.** AS 29.25.070(g) is amended to read:

29 (g) If a municipality prescribes a penalty for a violation of a municipal
30 ordinance, including a violation under (a) of this section, and there is a comparable
31 state **crime** [OFFENSE] under AS 11 or AS 28 with elements that are similar to the

1 municipal ordinance, the municipality may not impose a greater punishment than that
2 imposed for a violation of the state **crime** [LAW]. This subsection applies to home
3 rule and general law municipalities.

4 * **Sec. 17.** AS 33.07.010, enacted by sec. 117, ch. 36, SLA 2016, is amended to read:

5 **Sec. 33.07.010. Pretrial services program; establishment.** The commissioner
6 shall establish and administer a pretrial services program that provides a pretrial risk
7 assessment for all defendants **detained in custody in a correctional facility**
8 **following arrest and for any defendant for whom the prosecution requests to**
9 **have a pretrial risk assessment at the next hearing or arraignment. The pretrial**
10 **services program shall make** [,] recommendations to the court concerning pretrial
11 release decisions, and **provide** supervision of defendants released while awaiting trial
12 as ordered by the court.

13 * **Sec. 18.** AS 34.03.360(10) is amended to read:

14 (10) "illegal activity involving a place of prostitution" means a
15 violation of AS 11.66.120(a)(1) or **11.66.130(a)(2)(A) or (D)** [11.66.130(a)(1) OR
16 (4)];

17 * **Sec. 19.** AS 11.66.130(b), 11.66.135(b); AS 12.55.125(e)(4)(B), 12.55.125(e)(4)(C), and
18 12.55.125(e)(4)(D) are repealed.

19 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **APPLICABILITY.** (a) The following sections apply to offenses committed on or after
22 the effective date of those sections:

- 23 (1) AS 11.56.757(a), as amended by sec. 1 of this Act;
24 (2) AS 11.56.757(b), as amended by sec. 2 of this Act;
25 (3) AS 11.66.130(a), as amended by sec. 3 of this Act;
26 (4) AS 11.66.135(a), as amended by sec. 4 of this Act;
27 (5) AS 11.66.150(4), enacted by sec. 5 of this Act; and
28 (6) AS 28.15.011(d), enacted by sec. 15 of this Act.

29 (b) The following sections apply to sentences imposed on or after the effective date of
30 those sections for conduct occurring on or after the effective date of those sections:

- 31 (1) AS 12.55.125(e), as amended by sec. 6 of this Act;

- 1 (2) AS 12.55.125(q), enacted by sec. 7 of this Act;
- 2 (3) AS 12.55.135(a), as amended by sec. 8 of this Act;
- 3 (4) AS 12.55.135(b), as amended by sec. 9 of this Act;
- 4 (5) AS 12.55.135(l), as amended by sec. 10 of this Act;
- 5 (6) AS 12.55.135(p), as amended by sec. 11 of this Act; and
- 6 (7) AS 12.55.145(a), as amended by sec. 12 of this Act.

7 * **Sec. 21.** Section 17 of this Act takes effect January 1, 2018.

8 * **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect immediately under
9 AS 01.10.070(c).

30-LS0461\O
Martin
2/27/17

CS FOR SENATE BILL NO. 54(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR COGHILL

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to crime and criminal law; relating to violation of condition of release;**
2 **relating to sex trafficking; relating to sentencing; relating to probation; relating to**
3 **driving without a license; relating to the pretrial services program; and providing for an**
4 **effective date."**

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

6 *** Section 1.** AS 11.56.757(a) is amended to read:

7 (a) A person commits the crime [OFFENSE] of violation of condition of
8 release if the person

9 (1) has been charged with a crime or convicted of a crime;

10 (2) has been released under AS 12.30; and

11 (3) violates a condition of release imposed by a judicial officer under
12 AS 12.30, other than the requirement to appear as ordered by a judicial officer.

13 *** Sec. 2.** AS 11.56.757(b) is amended to read:

14 (b) Violation of condition of release is a class B misdemeanor [VIOLATION

PUNISHABLE BY A FINE OF UP TO \$1,000].

* Sec. 3. AS 11.66.130(a) is amended to read:

(a) A person commits the crime of sex trafficking in the third degree if [, WITH INTENT TO PROMOTE PROSTITUTION,] the person

(1) receives compensation for prostitution services rendered by another; and

(2) with the intent to promote prostitution,

(A) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(B) [(2)] as other than a patron of a prostitute, induces or causes another person who is 20 years of age or older to engage in prostitution;

(C) [(3) AS OTHER THAN A PROSTITUTE RECEIVING COMPENSATION FOR PERSONALLY RENDERED PROSTITUTION SERVICES,] receives or agrees to receive money or other property under an agreement or understanding that the money or other property is derived from prostitution; or

(D) [(4)] engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

* Sec. 4. AS 11.66.135(a) is amended to read:

(a) A person commits the crime of sex trafficking in the fourth degree if the person

(1) receives compensation for prostitution services rendered by another; and

(2) engages in conduct that institutes, aids, or facilitates prostitution under circumstances not proscribed under AS 11.66.130(a)(2)(D) [AS 11.66.130(a)(4)].

* Sec. 5. AS 11.66.150 is amended by adding a new paragraph to read:

(4) "compensation" does not include any payment for reasonably apportioned shared expenses.

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(e) Except as provided in (i) of this section, a defendant convicted of a class C

1 felony may be sentenced to a definite term of imprisonment of not more than five
2 years, and shall be sentenced to a definite term within the following presumptive
3 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

4 (1) if the offense is a first felony conviction and does not involve
5 circumstances described in (4) of this subsection, [PROBATION, WITH A
6 SUSPENDED TERM OF IMPRISONMENT OF] zero to 18 months; **an active term**
7 **of imprisonment within this range may not exceed 120 days**; a defendant sentenced
8 under this paragraph may, if the court finds it appropriate, be granted a suspended
9 imposition of sentence under AS 12.55.085;

10 (2) if the offense is a second felony conviction, one to three years;

11 (3) if the offense is a third felony conviction, two to five years;

12 (4) if the offense is a first felony conviction, and the defendant violated

13 (A) AS 08.54.720(a)(15), one to two years;

14 (B) AS 28.35.030(n)(1)(A) or 28.35.032(p)(1)(A), 120 days to
15 239 days;

16 (C) AS 28.35.030(n)(1)(B) or 28.35.032(p)(1)(B), 240 days to
17 359 days;

18 (D) AS 28.35.030(n)(1)(C) or 23.35.032(p)(1)(C), 360 days to
19 two years.

20 * **Sec. 7.** AS 12.55.125 is amended by adding a new subsection to read:

21 (q) Other than for convictions subject to a mandatory 99-year sentence, the
22 court shall impose, in addition to an active term of imprisonment imposed under (i) of
23 this section, a minimum period of (1) suspended imprisonment of five years and a
24 minimum period of probation supervision of 15 years for conviction of an unclassified
25 felony, (2) suspended imprisonment of three years and a minimum period of probation
26 supervision of 10 years for conviction of a class A or class B felony, or (3) suspended
27 imprisonment of two years and a minimum period of probation supervision of five
28 years for conviction of a class C felony. The period of probation is in addition to any
29 sentence received under (i) of this section.

30 * **Sec. 8.** AS 12.55.135(a) is amended to read:

31 (a) A defendant convicted of a class A misdemeanor may be sentenced to a

1 definite term of imprisonment of not more than

2 (1) one year, if the

3 (A) conviction is for a crime with a mandatory minimum term
4 of 30 days or more of active imprisonment;

5 (B) trier of fact finds the aggravating factor that the conduct
6 constituting the offense was among the most serious conduct included in the
7 definition of the offense;

8 (C) defendant has previously been convicted two or more
9 times [PAST CRIMINAL CONVICTIONS] for conduct violative of criminal
10 laws, punishable as felonies or misdemeanors, similar in nature to the offense
11 for which the defendant is being sentenced;

12 (D) conviction is for an assault in the fourth degree under
13 AS 11.41.230; or

14 (E) conviction is for a violation of

15 (i) AS 11.41.427;

16 (ii) AS 11.41.440;

17 (iii) AS 11.41.460, if the indecent exposure is before a
18 person under 16 years of age; [OR]

19 (iv) AS 11.61.116(c)(2); or

20 (v) AS 11.61.118(a)(2);

21 (2) 60 days, if the defendant has one previous conviction for
22 conduct violative of criminal laws, punishable as felonies or misdemeanors,
23 similar in nature to the offense for which the defendant is being sentenced;

24 (3) 30 days.

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26 (b) A defendant convicted of a class B misdemeanor may be sentenced to a
27 definite term of imprisonment of not more than

28 (1) 10 days unless otherwise specified in the provision of law defining
29 the offense or in this section;

30 (2) 90 days if the conviction is for a violation of

31 (A) AS 11.61.116(c)(1) and the person is 21 years of age or

1 older; or

2 (B) AS 11.61.120(a)(6) and the person is 21 years of age or

3 older; or

4 **(3) five days if the conviction is for a violation of AS 11.56.757.**

5 * **Sec. 10.** AS 12.55.135(l) is amended to read:

6 (l) A court sentencing a person convicted of theft in the fourth degree under
7 AS 11.46.150, concealment of merchandise under AS 11.46.220(c)(3), removal of
8 identification marks under AS 11.46.260(b)(3), unlawful possession under
9 AS 11.46.270(b)(3), issuing a bad check under AS 11.46.280(d)(4), or criminal
10 simulation under AS 11.46.530(b)(3) may not impose

11 (1) a sentence of more than **10** [FIVE] days of **active** [SUSPENDED]
12 imprisonment and a term of probation of more than six months if the person has
13 previously been convicted two or more times of an offense under AS 11.46.110 -
14 11.46.220, 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of
15 this or another jurisdiction with substantially similar elements; or

16 (2) a sentence of active or suspended imprisonment **and a term of**
17 **probation of more than six months** if the person has not been previously convicted,
18 or has previously been convicted once, of an offense under AS 11.46.110 - 11.46.220,
19 11.46.260 - 11.46.290, 11.46.360 or 11.46.365, or a law or ordinance of this or another
20 jurisdiction with substantially similar elements.

21 * **Sec. 11.** AS 12.55.135(p) is amended to read:

22 (p) If the state seeks to establish an aggravating factor at sentencing

23 (1) under (a)(1)(C) **or (a)(2)** of this section, written notice must be
24 served on the opposing party and filed with the court not later than 10 days before the
25 date set for imposition of sentence; the aggravating factor in (a)(1)(C) **or (a)(2)** of this
26 section must be established by clear and convincing evidence before the court sitting
27 without a jury; all findings must be set out with specificity;

28 (2) an aggravating factor under (a)(1)(B) of this section shall be
29 presented to a trial jury under procedures set by the court, unless the defendant waives
30 trial by jury, stipulates to the existence of the factor, or consents to have the factor
31 proven under procedures set out in (1) of this subsection; an aggravating factor

1 presented to a jury is established if proved beyond a reasonable doubt; written notice
2 of the intent to establish an aggravating factor must be served on the defendant and
3 filed with the court

4 (A) not later than 10 days before trial or at a time specified by
5 the court;

6 (B) not later than 48 hours, or at a time specified by the court,
7 if the court instructs the jury about the option to return a verdict for a lesser
8 included offense; or

9 (C) not later than five days before entering a plea that results in
10 a finding of guilt or at a time specified by the court unless the defendant
11 waives the notice requirement.

12 * **Sec. 12.** AS 12.55.145(a) is amended to read:

13 (a) For purposes of considering prior convictions in imposing sentence under

14 (1) AS 12.55.125(c), (d), or (e),

15 (A) a prior conviction may not be considered if a period of 10
16 or more years has elapsed between the date of the defendant's unconditional
17 discharge on the immediately preceding offense and commission of the present
18 offense unless the prior conviction was for an unclassified or class A felony;

19 (B) a conviction in this or another jurisdiction of an offense
20 having elements similar to those of a felony defined as such under Alaska law
21 at the time the offense was committed is considered a prior felony conviction;

22 (C) two or more convictions arising out of a single, continuous
23 criminal episode during which there was no substantial change in the nature of
24 the criminal objective are considered a single conviction unless the defendant
25 was sentenced to consecutive sentences for the crimes; offenses committed
26 while attempting to escape or avoid detection or apprehension after the
27 commission of another offense are not part of the same criminal episode or
28 objective;

29 (2) AS 12.55.125(l),

30 (A) a conviction in this or another jurisdiction of an offense
31 having elements similar to those of a most serious felony is considered a prior

1 most serious felony conviction;

2 (B) commission of and conviction for offenses relied on as
3 prior most serious felony offenses must occur in the following order:
4 conviction for the first offense must occur before commission of the second
5 offense, and conviction for the second offense must occur before commission
6 of the offense for which the defendant is being sentenced;

7 (3) AS 12.55.135(g),

8 (A) a prior conviction may not be considered if a period of five
9 or more years has elapsed between the date of the defendant's unconditional
10 discharge on the immediately preceding offense and commission of the present
11 offense unless the prior conviction was for an unclassified or class A felony;

12 (B) a conviction in this or another jurisdiction of an offense
13 having elements similar to those of a crime against a person or a crime
14 involving domestic violence is considered a prior conviction;

15 (C) two or more convictions arising out of a single, continuous
16 criminal episode during which there was no substantial change in the nature of
17 the criminal objective are considered a single conviction unless the defendant
18 was sentenced to consecutive sentences for the crimes; offenses committed
19 while attempting to escape or avoid detection or apprehension after the
20 commission of another offense are not part of the same criminal episode or
21 objective;

22 (4) AS 12.55.125(i),

23 (A) a conviction in this or another jurisdiction of an offense
24 having elements similar to those of a sexual felony is a prior conviction for a
25 sexual felony;

26 (B) a felony conviction in another jurisdiction making it a
27 crime to commit any lewd and lascivious act upon a child under the age of 16
28 years, with the intent of arousing, appealing to, or gratifying the sexual desires
29 of the defendant or the victim is a prior conviction for a sexual felony;

30 (C) two or more convictions arising out of a single, continuous
31 criminal episode during which there was no substantial change in the nature of

1 the criminal objective are considered a single conviction unless the defendant
2 was sentenced to consecutive sentences for the crimes; offenses committed
3 while attempting to escape or avoid detection or apprehension after the
4 commission of another offense are not part of the same criminal episode or
5 objective;

6 **(5) AS 12.55.135(a),**

7 **(A) a prior conviction may not be considered if a period of**
8 **five or more years has elapsed between the date of the defendant's**
9 **unconditional discharge on the immediately preceding offense and**
10 **commission of the present offense unless the prior conviction was for an**
11 **unclassified or class A felony;**

12 **(B) a conviction in this or another jurisdiction of an offense**
13 **having elements similar to those of a felony or misdemeanor defined as**
14 **such under Alaska law at the time the offense was committed is considered**
15 **a prior conviction;**

16 **(C) two or more convictions arising out of a single,**
17 **continuous criminal episode during which there was no substantial change**
18 **in the nature of the criminal objective are considered a single conviction**
19 **unless the defendant was sentenced to consecutive sentences for the**
20 **crimes; offenses committed while attempting to escape or avoid detection**
21 **or apprehension after the commission of another offense are not part of**
22 **the same criminal episode or objective.**

23 * Sec. 13. AS 12.63.100(6) is amended to read:

24 (6) "sex offense" means

25 (A) a crime under AS 11.41.100(a)(3), or a similar law of
26 another jurisdiction, in which the person committed or attempted to commit a
27 sexual offense, or a similar offense under the laws of the other jurisdiction; in
28 this subparagraph, "sexual offense" has the meaning given in
29 AS 11.41.100(a)(3);

30 (B) a crime under AS 11.41.110(a)(3), or a similar law of
31 another jurisdiction, in which the person committed or attempted to commit

1 one of the following crimes, or a similar law of another jurisdiction:

2 (i) sexual assault in the first degree;

3 (ii) sexual assault in the second degree;

4 (iii) sexual abuse of a minor in the first degree; or

5 (iv) sexual abuse of a minor in the second degree; or

6 (C) a crime, or an attempt, solicitation, or conspiracy to commit
7 a crime, under the following statutes or a similar law of another jurisdiction:

8 (i) AS 11.41.410 - 11.41.438;

9 (ii) AS 11.41.440(a)(2);

10 (iii) AS 11.41.450 - 11.41.458;

11 (iv) AS 11.41.460 if the indecent exposure is before a
12 person under 16 years of age and the offender has a previous conviction
13 for that offense;

14 (v) AS 11.61.125 - 11.61.128;

15 (vi) AS 11.66.110 or 11.66.130(a)(2)(B)
16 [11.66.130(a)(2)] if the person who was induced or caused to engage in
17 prostitution was under 20 years of age at the time of the offense;

18 (vii) former AS 11.15.120, former 11.15.134, or assault
19 with the intent to commit rape under former AS 11.15.160, former
20 AS 11.40.110, or former 11.40.200;

21 (viii) AS 11.61.118(a)(2) if the offender has a previous
22 conviction for that offense; or

23 (ix) AS 11.66.100(a)(2) if the offender is subject to punishment under
24 AS 11.66.100(c);

25 * **Sec. 14.** AS 18.67.101 is amended to read:

26 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
27 board may order the payment of compensation in accordance with the provisions of
28 this chapter for personal injury or death that resulted from

29 (1) an attempt on the part of the applicant to prevent the commission of
30 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
31 officer to do so, or aiding a victim of crime; or

1 (2) the commission or attempt on the part of one other than the
2 applicant to commit any of the following offenses:

3 (A) murder in any degree;

4 (B) manslaughter;

5 (C) criminally negligent homicide;

6 (D) assault in any degree;

7 (E) kidnapping;

8 (F) sexual assault in any degree;

9 (G) sexual abuse of a minor;

10 (H) robbery in any degree;

11 (I) threats to do bodily harm;

12 (J) driving while under the influence of an alcoholic beverage,
13 inhalant, or controlled substance or another crime resulting from the operation
14 of a motor vehicle, boat, or airplane when the offender is under the influence
15 of an alcoholic beverage, inhalant, or controlled substance;

16 (K) arson in the first degree;

17 (L) sex trafficking in violation of AS 11.66.110 or
18 **11.66.130(a)(2)(B)** [11.66.130(a)(2)];

19 (M) human trafficking in any degree; or

20 (N) unlawful exploitation of a minor.

21 * **Sec. 15.** AS 28.15.011 is amended by adding a new subsection to read:

22 (d) Violation of (b) of this section is an infraction.

23 * **Sec. 16.** AS 29.25.070(g) is amended to read:

24 (g) If a municipality prescribes a penalty for a violation of a municipal
25 ordinance, including a violation under (a) of this section, and there is a comparable
26 state **crime** [OFFENSE] under AS 11 or AS 28 with elements that are similar to the
27 municipal ordinance, the municipality may not impose a greater punishment than that
28 imposed for a violation of the state **crime** [LAW]. This subsection applies to home
29 rule and general law municipalities.

30 * **Sec. 17.** AS 33.07.010, enacted by sec. 117, ch. 36, SLA 2016, is amended to read:

31 **Sec. 33.07.010. Pretrial services program; establishment.** The commissioner

1 shall establish and administer a pretrial services program that provides a pretrial risk
2 assessment for all defendants **detained in custody in a correctional facility**
3 **following arrest and for any defendant for whom the prosecution requests to**
4 **have a pretrial risk assessment at the next hearing or arraignment. The pretrial**
5 **services program shall make** [,] recommendations to the court concerning pretrial
6 release decisions, and **provide** supervision of defendants released while awaiting trial
7 as ordered by the court.

8 * **Sec. 18.** AS 33.07.030(a) is amended to read:

9 (a) Pretrial services officers shall, in advance of a first appearance before a
10 judicial officer under AS 12.30, conduct a pretrial risk assessment on the defendant
11 using an instrument approved by the commissioner for the purpose of making a
12 recommendation to the court concerning an appropriate pretrial release decision and
13 conditions of release. In conducting a pretrial risk assessment and making a
14 recommendation to the court, the pretrial services officer shall follow the decision-
15 making process established by regulation under this chapter. The pretrial risk
16 assessment shall be completed and presented to the court, **the prosecution, and the**
17 **defendant** in a pretrial release report that contains a risk assessment rating of low,
18 moderate, or high and a recommendation regarding release and release conditions,
19 including a recommendation concerning a defendant's dependency on, abuse of, or
20 addiction to alcohol or controlled substances, to the extent those factors are indicated
21 by the offense or criminal history, before the defendant's first appearance before a
22 judicial officer.

23 * **Sec. 19.** AS 34.03.360(10) is amended to read:

24 (10) "illegal activity involving a place of prostitution" means a
25 violation of AS 11.66.120(a)(1) or **11.66.130(a)(2)(A) or (D)** [11.66.130(a)(1) OR
26 (4)];

27 * **Sec. 20.** AS 11.66.130(b), 11.66.135(b); AS 12.55.125(e)(4)(B), 12.55.125(e)(4)(C), and
28 12.55.125(e)(4)(D) are repealed.

29 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **APPLICABILITY.** (a) The following sections apply to offenses committed on or after

1 the effective date of those sections:

- 2 (1) AS 11.56.757(a), as amended by sec. 1 of this Act;
- 3 (2) AS 11.56.757(b), as amended by sec. 2 of this Act;
- 4 (3) AS 11.66.130(a), as amended by sec. 3 of this Act;
- 5 (4) AS 11.66.135(a), as amended by sec. 4 of this Act;
- 6 (5) AS 11.66.150(4), enacted by sec. 5 of this Act; and
- 7 (6) AS 28.15.011(d), enacted by sec. 15 of this Act.

8 (b) The following sections apply to sentences imposed on or after the effective date of
9 those sections for conduct occurring on or after the effective date of those sections:

- 10 (1) AS 12.55.125(e), as amended by sec. 6 of this Act;
- 11 (2) AS 12.55.125(q), enacted by sec. 7 of this Act;
- 12 (3) AS 12.55.135(a), as amended by sec. 8 of this Act;
- 13 (4) AS 12.55.135(b), as amended by sec. 9 of this Act;
- 14 (5) AS 12.55.135(l), as amended by sec. 10 of this Act;
- 15 (6) AS 12.55.135(p), as amended by sec. 11 of this Act; and
- 16 (7) AS 12.55.145(a), as amended by sec. 12 of this Act.

17 * **Sec. 22.** Sections 17 and 18 of this Act take effect January 1, 2018.

18 * **Sec. 23.** Except as provided in sec. 22 of this Act, this Act takes effect immediately under
19 AS 01.10.070(c).

30th Alaska State Legislature

Judiciary Committee
Chairman
Resources Committee
State Affairs Committee
Education Committee
Select Committee on Legislative
Ethics
Joint Armed Services Committee



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Senator John Coghill

SENATE BILL 54 **SUMMARY OF CHANGES** Crime and Sentencing Version A to Version O

Section 5

AS 11.66.150 – Definitions.

Establishes a definition for “compensation” which does not include any payment for reasonably apportioned shared expenses.

Section 6

AS 11.56.757(b) – Sentences of imprisonment for felonies.

Increases the active term of imprisonment that may be imposed for a C-felony that is a first felony conviction from zero to 90 days to zero to 120 days.

Section 7

AS 12.55.125 – Sentences of imprisonment for felonies.

Establishes minimum probation term lengths for felony sex offenses. 15 years for an unclassified felony; 10 years for an A or B felony; and 5 years for a C felony.

Section 8

AS 12.55.135 – Sentences of imprisonment for misdemeanors.

Increases the maximum sentence of imprisonment for distributing an explicit image of a minor to an Internet website that is accessible to the public.

Section 10

AS 12.55.135(l) – Sentences of imprisonment for misdemeanors.

Revises language relating to Theft in the 4th Degree (and similar offenses) to comport with the Alaska Criminal Justice Commission’s recommendations that

probation term lengths be clarified and 3rd and subsequent offenses be punishable by up to 10 days in prison.

Section 11

AS 12.55.135(p) – Sentences of imprisonment for misdemeanors.

Conforming change that requires notice to the opposing party if the state seeks to establish the new aggravating factor for A misdemeanors.

Section 12

AS 12.55.145(a) – Prior convictions.

Establishes a 5-year lookback period for the purposes of establishing aggravating factors for A misdemeanors that are based on prior convictions. Unclassified and class A felonies are excluded from the lookback period.

Section 15

AS 28.15.011 – Drivers must be licensed.

Reduces the crime of No Valid Operator's License to an infraction.

Section 17

AS 33.07.010 – Pretrial services program; establishment.

Technical changes to clarify the requirement to conduct pretrial risk assessments on defendants.

Section 18

AS 33.07.030 – Duties of pretrial services officers.

Requires the Department of Corrections to present the results of the pretrial risk assessment to prosecution and defense, in addition to the court.