

CS FOR SENATE BILL NO. 64(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/9/13

Referred: Judiciary

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the Alaska Sentencing Commission; relating to jail-time credit for**
2 **offenders in court-ordered treatment programs; allowing a reduction of penalties for**
3 **offenders successfully completing court-ordered treatment programs for persons**
4 **convicted of driving while under the influence or refusing to submit to a chemical test;**
5 **relating to court termination of a revocation of a person's driver's license; relating to**
6 **limitation of drivers' licenses; relating to restoration of a driver's license; relating to**
7 **conditions of probation and parole; and providing for an effective date."**

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

9 *** Section 1.** AS 12.55.027(c) is amended to read:

10 (c) To qualify for credit against a sentence of imprisonment for time spent in a
11 treatment program, the treatment program and the facility of the treatment program
12 must impose substantial restrictions on a person's liberty that are equivalent to
13 incarceration, including the requirement that a participant in the program

- 1 (1) must live in a residential facility operated by the program;
- 2 (2) must be confined at all times to the grounds of the facility or be in
3 the physical custody of an employee of the facility, except for court appearances,
4 meetings with counsel, or periods during which residents are permitted to leave
5 the facility, so long as the periods during which the residents are permitted to
6 leave the facility are expressly limited as to both time and purpose [AND WORK
7 REQUIRED BY THE TREATMENT PROGRAM AND APPROVED IN ADVANCE
8 BY THE COURT];
- 9 (3) is subject to disciplinary sanctions by the program if the participant
10 violates rules of the program and facility; sanctions must be in writing and available
11 for court review; and
- 12 (4) is subject to immediate arrest, without warrant, if the participant
13 leaves the facility without permission.

14 * **Sec. 2.** AS 22.20 is amended by adding new sections to read:

15 **Article 7. Sentencing Commission.**

16 **Sec. 22.20.500. Creation of commission.** The Alaska Sentencing Commission
17 is established in the Office of the Governor.

18 **Sec. 22.20.510. Membership; staff.** (a) The commission consists of 17
19 members as follows:

- 20 (1) three members of the senate appointed by the president of the
21 senate, one of whom shall be a member of the minority caucus of the senate;
- 22 (2) three members of the house of representatives appointed by the
23 speaker of the house of representatives, one of whom shall be a member of the
24 minority caucus of the house of representatives;
- 25 (3) the chief justice of the Alaska Supreme Court or another active or
26 retired justice of the supreme court or an active or retired judge of the court of appeals
27 designated by the chief justice;
- 28 (4) an active or retired superior court judge designated by the chief
29 justice for a three-year term;
- 30 (5) an active or retired district court judge designated by the chief
31 justice for a three-year term;

1 (6) a member of the Alaska Native community appointed by the
2 governor for a three-year term;

3 (7) the attorney general or a designee of the attorney general;

4 (8) the commissioner of corrections or a deputy commissioner
5 designated by the commissioner;

6 (9) the commissioner of public safety or a deputy commissioner
7 designated by the commissioner;

8 (10) the commissioner of health and social services or a deputy
9 commissioner designated by the commissioner;

10 (11) the director of the Public Defender Agency or a deputy public
11 defender designated by the director;

12 (12) the director of the office of public advocacy or deputy director
13 designated by the director; and

14 (13) a victims' rights advocate appointed by the governor for a three-
15 year term.

16 (b) A member appointed under (a)(6) or (13) of this section serves at the
17 pleasure of the governor and may be reappointed.

18 (c) The commission shall, by majority vote of the membership, elect a chair
19 and other officers it considers necessary from among its membership to serve on a
20 yearly basis.

21 (d) The Office of the Governor shall provide staff and administrative support
22 to the commission.

23 **Sec. 22.20.520. Compensation.** Members of the commission serve without
24 compensation but are entitled to per diem and travel expenses authorized for boards
25 and commissions under AS 39.20.180.

26 **Sec. 22.20.530. Meetings.** A majority of the members constitutes a quorum for
27 conducting business and exercising the powers of the commission. The commission
28 shall meet at least quarterly, at the call of the chair, at the request of the majority of the
29 members, or at a regularly scheduled time as determined by a majority of the
30 members. The commission shall keep a record of its proceedings and make these
31 records available for public inspection.

1 **Sec. 22.20.540. Powers and duties of the commission.** (a) The commission
 2 shall evaluate the effect of sentencing laws and practices on the criminal justice
 3 system to evaluate whether sentences provide for protection of the public, community
 4 condemnation of the offender, the rights of victims of crimes, restitution from the
 5 offender, and the principle of reformation. The commission shall make
 6 recommendations for improving criminal sentencing practices and, in so doing, the
 7 commission shall consider

8 (1) statutes and court rules related to sentencing of criminal defendants
 9 in misdemeanor and felony cases;

10 (2) sentencing practices of the judiciary, including use of presumptive
 11 sentences;

12 (3) means of promoting uniformity and proportionality in sentencing;

13 (4) alternatives to traditional forms of incarceration;

14 (5) the use of parole and probation in sentencing criminal defendants
 15 and to ensure public safety;

16 (6) the adequacy, availability, and effectiveness of treatment and
 17 rehabilitation programs;

18 (7) crime and incarceration rates, including the rate of violent crime, in
 19 this state compared to other states, and best practices adopted by other states that have
 20 proven to be successful in reducing recidivism;

21 (8) the relationship between sentencing priorities and correctional
 22 resources;

23 (9) truth and certainty in statutes and sentencing practices; and

24 (10) the effectiveness of the state's current methodologies for the
 25 collection and dissemination of criminal justice data.

26 (b) The commission may

27 (1) select and retain the services of consultants whose advice is
 28 considered necessary to assist the commission in obtaining information;

29 (2) accumulate and compile information concerning sentencing
 30 practices; and

31 (3) recommend legislative and administrative action on sentencing

1 practices.

2 **Sec. 22.20.550. Methodology.** In making recommendations, the commission
3 shall

4 (1) solicit and consider information and views from a variety of
5 constituencies to represent the broad spectrum of views that exist with respect to
6 possible approaches to sentencing criminals in the state; and

7 (2) base recommendations on the following factors:

8 (A) the seriousness of each offense in relation to other offenses;

9 (B) the effect of an offender's prior criminal history on
10 sentencing;

11 (C) the need to rehabilitate criminal offenders;

12 (D) the need to confine offenders to prevent harm to the public;

13 (E) the extent to which criminal offenses harm victims and
14 endanger the public safety and order;

15 (F) the effect of sentencing in deterring an offender or other
16 members of society from future criminal conduct;

17 (G) the effect of sentencing as a community condemnation of
18 criminal acts and as a reaffirmation of societal norms;

19 (H) the elimination of unjustified disparity in sentences;

20 (I) the resources available to agencies in the criminal justice
21 system; and

22 (J) the effect of sentencing on reducing the rate of recidivism in
23 the state.

24 **Sec. 22.20.560. Annual report and recommendations.** The commission shall
25 submit to the governor and the legislature an annual report of its proceedings for the
26 previous calendar year and may submit recommendations for legislative and
27 administrative action. Reports and recommendations provided under this section shall
28 be submitted not later than January 1 of each year.

29 **Sec. 22.20.570. Definition.** In AS 22.20.500 - 22.20.570, "commission" means
30 the Alaska Sentencing Commission.

31 * **Sec. 3.** AS 28.15.181(f) is amended to read:

1 (f) The court may terminate a revocation for an offense described in (a)(5) or
2 (8) of this section if

3 (1) **either**

4 **(A)** the person's license, privilege to drive, or privilege to
5 obtain a license has been revoked for the minimum periods set out in (c) of this
6 section; **or**

7 **(B) the person**

8 **(i) has successfully completed a court-ordered**
9 **treatment program under AS 28.35.028;**

10 **(ii) has not been charged with or convicted of a**
11 **violation of AS 28.35.030 or 28.35.032, or a similar municipal**
12 **ordinance, since completing the program; and**

13 **(iii) has been granted limited license privileges under**
14 **AS 28.15.201(g) and has successfully driven under that limited**
15 **license for the minimum period provided in AS 28.15.201(g)(3); and**

16 (2) the person complies with the provisions of AS 28.15.211(d) and

17 (e).

18 * **Sec. 4.** AS 28.15.201 is amended by adding a new subsection to read:

19 (g) Notwithstanding (d) of this section, a court revoking a driver's license,
20 privilege to drive, or privilege to obtain a license under AS 28.15.181(c), may grant
21 limited license privileges if

22 (1) the revocation was for a conviction under AS 28.35.030 or
23 28.35.032 or a similar municipal ordinance;

24 (2) the person is participating in a court-ordered treatment program
25 under AS 28.35.028;

26 (3) the court grants the limited license privileges as provided in this
27 section for, at a minimum, either

28 (A) the period of revocation while the person is participating in
29 a court-ordered treatment program under AS 28.35.028; or

30 (B) five years, for a person convicted under AS 28.35.030(n) or
31 AS 28.35.032(p), including the period of revocation while the person was

1 participating in a court-ordered treatment program under AS 28.35.028;

2 (4) the person provides proof of insurance as required by AS 28.20.230
3 and 28.20.240;

4 (5) the person agrees to totally abstain from the use of alcoholic
5 beverages, inhalants, and controlled substances; and

6 (6) the person agrees to participate in and pay the cost of testing, as
7 ordered by the court, for the use of any of those substances.

8 (h) The court shall immediately revoke a limited license granted under (g) of
9 this section if the person

10 (1) is charged with or convicted of a violation of AS 28.35.030 or
11 28.35.032 or a similar law or ordinance of this or another jurisdiction; or

12 (2) tests positive under (g)(6) of this section for the use of alcoholic
13 beverages, inhalants, or controlled substances.

14 * **Sec. 5.** AS 28.35.028(b) is amended to read:

15 (b) Once the court elects to proceed under this section, the defendant shall
16 enter a no contest or guilty plea to the offense or shall admit to a probation violation,
17 as appropriate. The state and the defendant may enter into a plea agreement to
18 determine the offense or offenses to which the defendant is required to plead. If the
19 court accepts the agreement, the court shall enforce the terms of the agreement. The
20 court shall enter a judgment of conviction for the offense or offenses for which the
21 defendant has pleaded or an order finding that the defendant has violated probation, as
22 appropriate. A judgment of conviction or an order finding a probation violation must
23 set a schedule for payment of restitution owed by the defendant. In a judgment of
24 conviction and on probation conditions that the court considers appropriate, the court
25 may withhold pronouncement of a period of imprisonment or a fine to provide an
26 incentive for the defendant to complete recommended treatment successfully.
27 Imprisonment or a fine imposed by a court shall comply with AS 12.55 or any
28 mandatory minimum or other sentencing provision applicable to the offense.
29 However, notwithstanding Rule 35, Alaska Rules of Criminal Procedure, and any
30 other provision of law, the court, at any time after the period when a reduction of
31 sentence is normally available, may consider and reduce the defendant's sentence,

1 **including imprisonment, fine, or license revocation,** based on the defendant's
 2 compliance with the treatment plan; when reducing a sentence, the court (1) may not
 3 reduce the sentence below the mandatory minimum sentence for the offense unless the
 4 court finds that the defendant has successfully complied with and completed the
 5 treatment plan and that the treatment plan approximated the severity of the minimum
 6 period of imprisonment, and (2) may consider the defendant's compliance with the
 7 treatment plan as a mitigating factor allowing a reduction of a sentence under
 8 AS 12.55.155(a). A court entering an order finding the defendant has violated
 9 probation may withhold pronouncement of disposition to provide an incentive for the
 10 defendant to complete the recommended treatment successfully.

11 * **Sec. 6.** AS 28.35.030(o) is amended to read:

12 (o) Upon request, the department shall review a driver's license revocation
 13 imposed under (n)(3) of this section and

14 **(1)** may restore the driver's license if

15 **(A)** [(1)] the license has been revoked for a period of at least 10
 16 years;

17 **(B)** [(2)] the person has not been convicted of a criminal
 18 offense since the license was revoked; and

19 **(C)** [(3)] the person provides proof of financial responsibility;

20 **(2)** shall restore the driver's license if

21 **(A)** **the person has been granted limited license privileges**
 22 **under AS 28.15.201(g) and has successfully driven under that limited**
 23 **license for at least five years without having the limited license privileges**
 24 **revoked;**

25 **(B)** **the person has not been convicted of a criminal offense**
 26 **since the license was revoked; and**

27 **(C)** **the person provides proof of financial responsibility.**

28 * **Sec. 7.** AS 28.35.032(q) is amended to read:

29 (q) Upon request, the department shall review a driver's license revocation
 30 imposed under (p)(3) of this section and

31 **(1)** may restore the driver's license if

1 (A) [(1)] the license has been revoked for a period of at least 10
2 years;

3 (B) [(2)] the person has not been convicted of a criminal
4 offense since the license was revoked; and

5 (C) [(3)] the person provides proof of financial responsibility;

6 **(2) shall restore the driver's license if**

7 **(A) the person has been granted limited license privileges**
8 **under AS 28.15.201(g) and has successfully driven under that limited**
9 **license for at least five years without having the limited license privileges**
10 **revoked;**

11 **(B) the person has not been convicted of a criminal offense**
12 **since the license was revoked; and**

13 **(C) the person provides proof of financial responsibility.**

14 * **Sec. 8.** AS 33.05.020 is amended by adding a new subsection to read:

15 (f) The commissioner shall establish a program and eligibility requirements
16 for certain offenders with conditions of probation that include not consuming
17 controlled substances, inhalants, or alcoholic beverages and who have been identified
18 as a high risk for violating their conditions of probation. The program shall

19 (1) include random urinalysis testing for controlled substance, inhalant,
20 and alcohol use;

21 (2) require that the probation officer file a petition to revoke probation
22 by the close of the next business day if a probationer

23 (A) fails to appear for an appointment as directed by the
24 probation officer;

25 (B) tests positive for the use of controlled substances, inhalants,
26 or alcoholic beverages; or

27 (C) fails to follow any condition of probation ordered by the
28 court; and

29 (3) include a means to provide the court with prompt notice that a
30 petition to revoke probation has been filed on a probationer placed in the program by
31 the commissioner so that the court may review the petition, schedule a prompt hearing,

1 address a request for a warrant provided by the probation officer, or take other action
2 the court considers appropriate.

3 * **Sec. 9.** AS 33.16.060 is amended by adding a new subsection to read:

4 (c) The board shall establish a program for certain offenders with conditions
5 of parole that include not consuming controlled substances, inhalants, or alcoholic
6 beverages and who have been identified as a high risk for violating their conditions of
7 parole. The program must

8 (1) include random urinalysis testing for controlled substance, inhalant,
9 and alcohol use;

10 (2) require that a parole officer file a petition to revoke parole by the
11 close of the next business day if a parolee

12 (A) fails to appear for an appointment as directed by the
13 probation officer;

14 (B) tests positive for the use of controlled substances, inhalants,
15 or alcoholic beverages; or

16 (C) fails to follow any condition of probation ordered by the
17 court; and

18 (3) include a means to provide the board with prompt notice that a
19 petition to revoke parole has been filed on a parolee placed in the program by the
20 board so that the board may review the petition, schedule a prompt hearing, address a
21 request for a warrant provided by the parole officer, or take other action the board
22 considers appropriate.

23 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **APPLICABILITY.** (a) The change made to AS 12.55.027(c), as amended by sec. 1 of
26 this Act, applies to offenses occurring on or after the effective date of this Act.

27 (b) The change made to AS 28.15.181(f), as amended by sec. 3 of this Act, the
28 changes made to AS 28.15.201, added by sec. 4 of this Act, the change made to
29 AS 28.35.028(b), as amended by sec. 5 of this Act, the changes made to AS 28.35.030(o), as
30 amended by sec. 6 of this Act, and the changes made to AS 28.35.032(q), as amended by sec.
31 7 of this Act, apply to convictions occurring before, on, or after the effective date of this Act

1 for offenses occurring before, on, or after the effective date of this Act.

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

4 TRANSITIONAL PROVISIONS. The initial designations and appointments to the
5 Alaska Sentencing Commission under AS 22.20.510, added by sec. 2 of this Act, shall be
6 made and the first meeting of the commission shall be held not later than September 30, 2014.
7 The first report required under AS 22.20.560, added by sec. 2 of this Act, shall be submitted
8 not later than February 1, 2016.

9 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).