

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

November 8, 2017

SUBJECT: Substantive due process; Amendment 12
HCS CSSB 54(FIN) am H; (Work Order No. 30-LS0461\I.A)

TO: Senator John Coghill
Attn: Jordan Skilling

FROM: Doug Gardner
Director, Legal Services

You have asked whether amendment 12 (Work Order No. 30-LS0461\I.93), that was adopted on the house floor, raises a due process concern. The answer is yes.

Amendment 12, as amended, resulted in the presumptive sentencing range for a first conviction for a Class C felony to be zero to two years and made other changes to AS 12.55.125(e) to be much the same as it was pre-SB 91 (29th Legislature).¹ The amendment did not change the presumptive range or reinsert probation conditions for a first offense, Class B felony under AS 12.55.125(d), which is also zero to two years, without additional considerations. Therefore, unless a sentence is included in the enhanced penalty ranges under AS 12.55.125(i)(3) or (4), the presumptive ranges for first time Class B and Class C sentencing are the same.

The issue raises a substantive due process concern. The Alaska due process clause includes a guarantee of substantive due process, as well as the more frequently invoked guarantee of procedural due process. Courts have interpreted due process to provide for sentencing that is proportional to the level of the crime. A person's right to substantive due process is violated if the person is subject to "a legislative enactment [that] has no reasonable relationship to a legitimate governmental purpose." *Concerned Citizens of*

¹ In addition to the presumptive range, amendment 12 reinserted probation language for a first offense that existed before SB 91 as follows:

the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph.

This provision was not reinserted for Class B felony first time offenses in AS 12.55.125(d).

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South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447, 452 (Alaska 1974)
(footnote omitted).

The combination of the difference in probation conditions and the same presumptive range for sentencing purposes for first time offenses of Class B and Class C felonies raises the very real possibility that Class C sentencing is more severe than Class B.

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