



November 9, 2017

Alaska State Senate
State Capitol
Juneau, AK 99801

Re: Constitutional Issues in House Version of SB 54

Dear Senator:

We at the American Civil Liberties Union of Alaska want to ensure each of you are aware of the serious constitutional issues present in Senate Bill 54 as it passed the State House earlier this week.

The issues center around Amendment 12 offered by Representative Lora Reinbold, which passed on the House Floor, creating a presumptive sentencing range for first time convictions of Class C felonies of zero to two years (increased from the Senate version of zero to one year). That creates an anomaly in the criminal code where, if SB 54 passed as currently written, first time Class C and Class B felony presumptive sentence ranges would be identical.

The identical sentencing ranges for these two classes of offenses present serious problems in enforcing the new sentencing ranges for the less serious, C felonies for two reasons.

First, the new Class C felony presumptive ranges would violate a due process requirement under both state and federal constitutions that sentencing ranges bear a substantial relationship to legislative policy.¹ The entire concept of graduated classes of offenses is to ensure that more serious crimes are sentenced more harshly.² In reviewing the class of offenses for C felonies and B felonies, which would have identical presumptive penalties,³ it is likely the court would conclude that the sentencing for each of those classifications is arbitrary.⁴

A second, related issue with Amendment 12 is the that sentences must bear some proportional relationship to the offense under the constitutional prohibitions of cruel and

¹ See, e.g., *Stiegele v. State*, 685 P.2d 1255, 1257-58 (Alaska 1984); *Griffith v. State*, 641 P.2d 228, 234 (Alaska 1982).

² *Dancer v. State*, 715 P.2d 1174, 1181 (Alaska Ct. App. 1986) (“Presumptive sentencing serves the legislative goal of ensuring uniformity and limiting disparity in sentencing.”)

³ *Dancer*, 715 P.2d at 1181-82 (reviewing the legislative classifications for constitutionality by reviewing the entire classes of offenses, not in any one particular case).

⁴ *Griffith v. State*, 641 P.2d 228, 233 (Alaska 1982).

unusual punishment. “It is a precept of justice that punishment for crime should be graduated in proportion to the offense.”⁵ Those punishments are arbitrary when, as succinctly described by one court, “similar offenses are compared and conduct that creates a less serious threat to public health and safety is punished more harshly.”⁶

These flaws in SB 54 are unfortunately serious enough that the ACLU of Alaska will be forced to defend rights of Alaskans in court. The key takeaway from this is that courts will create their own guidelines, which will very likely be less than the original SB 54 presumptive sentencing ranges, and would likely revert to the presumptive ranges that preceded SB 54—probation with a suspended term of imprisonment.⁷ This litigation is likely to take years to come to final resolution, but courts would likely grant a stay to immediately prevent enforcement of this provision in all Class C felony cases while the case is pending.

We’re sure you are hearing, as we are, from Alaskans that they want a swift conclusion to SB 54 so that its reforms can send a clear and powerful message through our communities to deter crime. Passing SB 54 with the substance of Amendment 12 intact will completely undermine that goal by creating protracted litigation and countless media stories drawing attention to the unenforceability of SB 54’s unconstitutional provisions. It is very possible that is the only takeaway average citizens will draw from this legislation, and any “tough-on-crime” narrative you were hoping to create will be lost.

It is in no Alaskan’s best interest for this issue to become the subject of drawn out legal proceedings. To prevent that, we are asking the State Senate not to concur with the House’s version and to send the bill to a conference committee where these and other issues can be heard and resolved.

Sincerely,



Tara A. Rich
Legal & Policy Director

⁵ *Faulkner v. State*, 445 P.2d 815, 818 (Alaska 1968).

⁶ *People v. Arnold*, 812 N.E.2d 696, 703 (Ill. App. Ct. 2003); *see also Faulkner*, 445 P.2d at 818.

⁷ AS 12.55.125(e)(1).