

**SENATE CS FOR CS FOR HOUSE BILL NO. 245(HES) am S**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Amended: 5/10/98**

**Offered: 5/6/98**

**Sponsor(s): REPRESENTATIVES DYSON, Berkowitz, Hodgins**

**SENATOR Phillips**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to assault in the fourth degree; relating to the definition of  
2 'crime involving domestic violence' in AS 11; relating to unlawful contact with a  
3 victim or witness; relating to rehabilitation programs for perpetrators of domestic  
4 violence; amending Rule 5(b), Alaska Rules of Criminal Procedure and Rule  
5 404(b), Alaska Rules of Evidence; and providing for an effective date."

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

7 \* **Section 1.** AS 11.56 is amended by adding a new section to read:

8 **Sec. 11.56.750. Unlawful contact in the first degree.** (a) A person commits  
9 the crime of unlawful contact in the first degree if the person

10 (1) has been ordered not to contact a victim or witness of the offense

11 as

12 (A) part of a sentence imposed under AS 12.55.015; or

13 (B) as a condition of

- 1 (i) release under AS 12.30;  
 2 (ii) probation under AS 12.55.101; or  
 3 (iii) parole under AS 33.16.150; and

4 (2) either directly or indirectly, knowingly contacts or attempts to  
 5 contact the victim or witness in violation of the order.

6 (b) Unlawful contact in the first degree is a class A misdemeanor.

7 \* **Sec. 2.** AS 11.56 is amended by adding a new section to read:

8 **Sec. 11.56.755. Unlawful contact in the second degree.** (a) A person  
 9 commits the crime of unlawful contact in the second degree if

10 (1) the person is arrested for a crime against a person under AS 11.41  
 11 or a crime involving domestic violence; and

12 (2) before the person's initial appearance before a judge or magistrate  
 13 or before dismissal of the charge for which the person was arrested, whichever occurs  
 14 first, the person initiates communication or attempts to initiate communication with the  
 15 alleged victim of the crime that was the basis for the person's arrest.

16 (b) Unlawful contact in the second degree is

17 (1) a class B misdemeanor if the person was arrested for an offense that  
 18 is a class A misdemeanor or a felony offense;

19 (2) a violation if the person was arrested for an offense that is a class  
 20 B misdemeanor.

21 \* **Sec. 3.** AS 11.56 is amended by adding a new section to read:

22 **Sec. 11.56.756. Definitions.** In AS 11.56.750 and 11.56.755,

23 (1) "victim" has the meaning given in AS 12.55.185; and

24 (2) "witness" has the meaning given in AS 12.61.900.

25 \* **Sec. 4.** AS 11.81.900(b) is amended by adding a new paragraph to read:

26 (60) "crime involving domestic violence" has the meaning given in  
 27 AS 18.66.990.

28 \* **Sec. 5.** AS 12.25.150(b) is amended to read:

29 (b) Immediately after an arrest, a prisoner shall have the right to telephone or  
 30 otherwise communicate with the prisoner's attorney and any relative or friend, and any  
 31 attorney at law entitled to practice in the courts of Alaska shall, at the request of the

prisoner or any relative or **friend** [FRIENDS] of the prisoner, have the right to immediately visit the person arrested. **This subsection does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances proscribed under AS 11.56.755.**

\* **Sec. 6.** AS 12.55.015(a) is amended to read:

**Sec. 12.55.015. Authorized sentences; forfeiture.** (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in

AS 12.55.035; or

(B) day fine when authorized by law and as provided in

AS 12.55.036 [,] if the court does not impose a term of periodic or continuous imprisonment or place the defendant on probation;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the

defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

**(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged.**

\* Sec. 7. AS 12.55.101(a) is amended to read:

(a) Before granting probation to a person convicted of a crime involving domestic violence, the court shall consider the safety and protection of the victim and any member of the victim's family. If a person convicted of a crime involving domestic violence is placed on probation, the court may order the conditions authorized in AS 12.55.100 and AS 18.66.100(c)(1) - (7) and (11), and may

(1) require the defendant to participate in and complete to the satisfaction of the court one or more programs for the rehabilitation of perpetrators of domestic violence that meet the standards set **by, and that are approved** by, the Department of Corrections under AS 44.28.020(b) [,] if the program is available in the community where the defendant resides; **the court may not order a defendant to participate in or complete a program for the rehabilitation of perpetrators of domestic violence that does not meet the standards set, and that is not approved, by the Department of Corrections under AS 44.28.020(b);**

(2) require the defendant to refrain from the consumption of alcohol;  
and

(3) impose any other condition necessary to protect the victim and any members of the victim's family, or to rehabilitate the defendant.

\* Sec. 8. AS 12.55.135(c) is amended to read:

(c) A defendant convicted of assault in the fourth degree **that is a crime involving domestic violence** committed in violation of the provisions of an order issued or filed under **AS 12.30.027 or** AS 18.66.100 - 18.66.180 **and not subject to sentencing under (g) of this section** [OR ISSUED UNDER FORMER AS 25.35.010

OR 25.35.020] shall be sentenced to a minimum term of imprisonment of 20 days.

\* **Sec. 9.** AS 12.55.135 is amended by adding new subsections to read:

(g) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence shall be sentenced to a minimum term of imprisonment of

(1) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

(h) If a defendant is sentenced under (g) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of sentence may not be suspended;

(3) the minimum term of imprisonment may not otherwise be reduced.

(i) In this section,

(1) "crime against a person" means a crime under AS 11.41, or a crime in this or another jurisdiction having elements similar to those of a crime under AS 11.41;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990.

\* **Sec. 10.** AS 12.55.145(a) is amended to read:

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

(1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

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

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

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

(2) AS 12.55.125(l),

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

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

(3) AS 12.55.135(g),

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

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

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

1 same criminal episode or objective.

2 \* **Sec. 11.** AS 12.55.145(c) is amended to read:

3 (c) The defendant shall file with the court and serve on the prosecuting  
4 attorney notice of denial, consisting of a concise statement of the grounds relied upon  
5 and that may be supported by affidavit or other documentary evidence, no later than  
6 10 days before the date set for the imposition of sentence if the defendant

7 (1) denies

8 (A) the authenticity of a prior judgment of conviction;

9 (B) that the defendant is the person named in the judgment;

10 (C) that the elements of a prior offense committed in this or  
11 another jurisdiction are similar to those of a

12 (i) felony defined as such under Alaska law;

13 (ii) most serious felony, defined as such under Alaska  
14 law;

15 (iii) crime against a person or a crime involving  
16 domestic violence;

17 (D) that a prior conviction occurred within the period specified  
18 in (a)(1)(A) or (3)(A) of this section; or

19 (E) that a previous conviction occurred in the order required  
20 under (a)(2)(B) of this section; or

21 (2) alleges that two or more purportedly separate prior convictions  
22 should be considered a single conviction under (a)(1)(C) or (3)(C) of this section.

23 \* **Sec. 12.** AS 12.55.145(d) is amended to read:

24 (d) Matters alleged in a notice of denial shall be heard by the court sitting  
25 without a jury. If the defendant introduces substantial evidence that the defendant is  
26 not the person named in a prior judgment of conviction, that the judgment is not  
27 authentic, that the conviction did not occur within the period specified in (a)(1)(A) or  
28 (3)(A) of this section, that a conviction should not be considered a prior felony  
29 conviction under (a)(1)(B) of this section, [OR] a prior most serious felony conviction  
30 under (a)(2)(A) of this section, or a prior crime against a person or a crime  
31 involving domestic violence conviction under (a)(3)(B) of this section, or that a

previous conviction did not occur in the order required under (a)(2)(B) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(1)(C) or (3)(C) of this section is on the defendant by clear and convincing evidence.

\* **Sec. 13.** AS 12.55.145 is amended by adding a new subsection to read:

(g) In this section,

(1) "crime against a person" has the meaning given in AS 12.55.135(i);

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990.

\* **Sec. 14.** AS 18.66.100(c)(15) is amended to read:

(15) order the respondent, at the respondent's expense, to participate in

(A) a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by, and that is approved by, the Department of Corrections under AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances, or both; a protective order under this section may not require a respondent to participate in a program for the rehabilitation of perpetrators of domestic violence unless the program meets the standards set by, and that is approved by, the Department of Corrections under AS 44.28.020(b);

\* **Sec. 15.** AS 33.16.150(f) is amended to read:

(f) In addition to other conditions of parole imposed under this section, the board may impose as a condition of special medical, discretionary, or mandatory parole for a prisoner serving a term for a crime involving domestic violence (1) any of the terms of protective orders under AS 18.66.100(c)(1) - (7); (2) a requirement that, at the prisoner's expense, the prisoner participate in and complete, to the satisfaction of the board, a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by, and that is approved by, the department under AS 44.28.020(b); and (3) any other condition necessary to rehabilitate the prisoner. The board shall establish procedures for the exchange of information concerning the parolee with the victim and for responding to reports of nonattendance or noncompliance by the parolee with conditions imposed under this subsection. The



board may not under this subsection require a prisoner to participate in and complete a program for the rehabilitation of perpetrators of domestic violence unless the program meets the standards set by, and is approved by, the department under AS 44.28.020(b).

\* Sec. 16. AS 44.28.020(b) is amended to read:

(b) The department shall, with the approval of the Council on Domestic Violence and Sexual Assault, adopt standards, by regulation, for rehabilitation programs for perpetrators of domestic violence as defined in AS 18.66.990 and for the approval of those programs. For purposes of AS 12.55.101, AS 18.66.100(c), and AS 33.16.150(f), the department shall approve a program if the department determines that the [DETERMINE WHETHER A] program meets the standards. Upon application of a program, the department may waive one or more standards and approve the program if the department determines

(1) there is good cause for the waiver;

(2) the safety of victims and children is not compromised by the waiver;

(3) an acceptable alternative is provided by the program.

\* Sec. 17. Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Rights of Prisoner to Communicate With Attorney or Other Person.**

Immediately after arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both an attorney and any relative or friend. Any attorney at law entitled to practice in the courts of Alaska, at the request of either the prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit the prisoner in private. This subsection does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances proscribed under AS 11.56.755.

\* Sec. 18. Rule 404(b)(3), Alaska Rules of Evidence, is amended to read:

(3) In a prosecution for a crime of sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible if the defendant relies on a defense of consent. In a prosecution for a crime of [OR] attempt to commit sexual

1 assault in any degree, evidence of other sexual assaults or attempted sexual assaults  
2 by the defendant against the same or another person is admissible [IF THE  
3 DEFENDANT RELIES ON A DEFENSE OF CONSENT].

4 \* **Sec. 19.** AS 11.56.745(b) is repealed.

5 \* **Sec. 20.** AS 12.25.150(b), as amended by sec. 5 of this Act, amends Rule 5(b), Alaska  
6 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate  
7 immediately after arrest.

8 \* **Sec. 21.** Sections 2, 5, and 17 of this Act take effect only if secs. 17 and 20 of this Act  
9 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution  
10 of the State of Alaska.

11 \* **Sec. 22.** APPLICABILITY. (a) The changes made by secs. 5, 17, and 20 of this Act  
12 apply to persons arrested for offenses occurring before, on, or after the effective date of this  
13 Act.

14 (b) Section 18 of this Act applies to a criminal or juvenile proceeding held on or after  
15 the effective date of sec. 18 of this Act regardless of whether the criminal offense occurred  
16 before, on, or after the effective date of sec. 18 of this Act.

17 (c) References to previous convictions in this Act apply to all convictions occurring  
18 before, on, or after the effective date of this Act.

19 \* **Sec. 23.** Sections 7 and 14 - 15 of this Act take effect on the later of (1) January 1,  
20 1999, or (2) six months after the effective date of the regulations adopted by the Department  
21 of Corrections under AS 44.28.020(b), as amended by sec. 16 of this Act, relating to the  
22 approval of rehabilitation programs for perpetrators of domestic violence. The lieutenant  
23 governor and the commissioner of corrections shall notify the revisor of statutes when the  
24 regulations are filed.

25 \* **Sec. 24.** Except for secs. 7 and 14 - 15, this Act takes effect immediately under  
26 AS 01.10.070(c).