

CS ordered

SENATE BILL NO. 187

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATOR COGHILL

Introduced: 2/21/14
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of endangering the welfare of a child in the second degree;
2 relating to the crime of misconduct involving confidential information in the first
3 degree; amending Rule 16(d)(3), Alaska Rules of Criminal Procedure; and providing for
4 an effective date."

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

6 * Section 1. AS 11.51.110(a) is amended to read:

7 (a) A person commits the offense of endangering the welfare of a child in the
8 second degree ~~if the person [,]~~

9 (1) while caring for a child under 10 years of age,

10 (A) [(1)] causes or allows the child to enter or remain in a
11 dwelling or vehicle in which a controlled substance is stored in violation of
12 AS 11.71; or

13 (B) [(2)] is impaired by an intoxicant, whether or not
14 prescribed for the person under AS 17.30, and there is no third person who is at

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1 least 12 years of age and not impaired by an intoxicant present to care for the
2 child; or

3 ~~(2) knowingly engages in conduct that violates AS 11.41.100 -
4 11.41.220, 11.41.230(a)(1), 11.41.230(a)(2), 11.41.410 - 11.41.432, or 11.41.450
5 against another person who is a household member of the person with reckless
6 disregard that the conduct is in the physical presence or hearing of a child under
7 16 years of age who is a household member of either person.~~

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8 * Sec. 2. AS 11.51.110(b) is amended by adding a new paragraph to read:

9 (3) "household member" has the meaning given in AS 18.66.990.

10 * Sec. 3. AS 11.51.110(c) is amended to read:

11 (c) Endangering the welfare of a child in the second degree under (a)(1) of
12 this section is a violation.

13 * Sec. 4. AS 11.51.110 is amended by adding a new subsection to read:

14 (d) Endangering the welfare of a child in the second degree under (a)(2) of this
15 section is a class A misdemeanor.

16 * Sec. 5. AS 11.76.113(a) is amended to read:

17 (a) A person commits the crime of misconduct involving confidential
18 information in the first degree if the person

19 (1) violates AS 11.76.115 and obtains the confidential information
20 with the intent to

21 (A) [(1)] use the confidential information to commit a crime; or

22 (B) [(2)] obtain a benefit to which the person is not entitled, to
23 injure another person, or to deprive another person of a benefit; or

24 (2) publishes or distributes an audio or video recording of an
25 interview of a child for a criminal or child protection investigation, or records of
26 a medical examination of a victim or minor conducted for the purpose of the
27 investigation of an offense under AS 11.41.410 - 11.41.440, 11.41.450, or a child
28 protection investigation, including photographs taken during the examination;
29 this paragraph does not apply to a person who publishes or distributes a
30 recording, record, or image as permitted or directed under

31 (A) a court order;

- 1 **(B) a rule of court; or**
 2 **(C) a federal or state law requiring the publication or**
 3 **distribution.**

4 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
 5 read:

6 DIRECT COURT RULE AMENDMENT. Rule 16(d)(3), Alaska Rules of
 7 Criminal Procedure, is amended to read

8 (3) Materials to Remain in Custody of Attorney.

9 (A) Materials furnished to an attorney pursuant to these rules
 10 shall be used only for the purpose of conducting the case. The following
 11 materials must remain in the custody of the defense attorney, the attorney's
 12 staff, investigators, experts, and others as necessary for the preparation of the
 13 defendant's case, and shall be subject to other terms and conditions that the
 14 court may provide. The materials listed in this paragraph shall not be provided
 15 to the defendant, but the information in the materials may be shared with the
 16 defendant to the extent necessary to prepare the defense of the case:

17 (i) a criminal history record of a victim or witness;

18 (ii) a medical, psychiatric, psychological, or counseling
 19 record of a victim or witness;

20 (iii) an adoption record;

21 (iv) a record that is confidential under AS 47.12.300 or
 22 a similar law in another jurisdiction;

23 (v) a report of a presentence investigation of a victim or
 24 witness prepared pursuant to Criminal Rule 32.1 or a similar law in
 25 another jurisdiction;

26 (vi) a record of the Department of Corrections other
 27 than the defendant's own file and any other incident report relating to
 28 the crime with which the defendant is charged; [AND]

29 (vii) any other record that the court orders be kept in the
 30 exclusive custody of the attorney;

31 **(viii) in a prosecution under AS 11.41.410 - 11.41.440**

1 **or 11.41.450, an audio or video interview of a victim; and**
 2 **(ix) in a prosecution under AS 11.41.410 - 11.41.440**
 3 **or 11.41.450, photographs taken during a medical examination of a**
 4 **victim.**

5 (B) An attorney shall not disclose to a defendant the residence
 6 or business address or telephone number of a victim or witness, obtained from
 7 information provided under this rule, even if the defendant is acting as co-
 8 counsel. If the address and telephone numbers of all victims and witnesses
 9 have been obliterated, materials that had contained the address or telephone
 10 number of a victim or witness may be provided to a defendant proceeding
 11 without counsel only as allowed by AS 12.61.120.

12 (C) Notwithstanding a defendant's status as co-counsel,
 13 materials covered by subsection (d)(3)(A) shall remain in the custody of the
 14 defendant's attorney, the attorney's staff, investigators, experts, and others as
 15 necessary for the preparation of the defendant's case, and shall be subject to
 16 other terms and conditions that the court may provide.

17 (D) If a defendant is proceeding without counsel, materials
 18 covered by subsection (d)(3)(A) may be provided to the defendant. If materials
 19 are provided to an unrepresented defendant under this paragraph, the court
 20 shall order that the materials remain in the defendant's exclusive custody, be
 21 used only for purposes of conducting the case, and be subject to other terms,
 22 conditions, and restrictions that the court may provide. Upon a showing of
 23 good cause, the court may impose specific terms, conditions, or restrictions
 24 concerning inspection of the materials by other persons involved in the
 25 preparation of the case, such as staff, investigators, experts, witnesses, or
 26 others. The court shall also inform the defendant and such other persons
 27 involved in the preparation of the case that violation of an order issued under
 28 this paragraph is punishable as a contempt of court **and may also constitute a**
 29 **criminal offense.**

30 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 APPLICABILITY. (a) Sections 1 - 5 of this Act apply to offenses committed on or
2 after the effective date of this Act.

3 (b) Section 6 of this Act applies to all criminal proceedings pending on or arising after
4 the effective date of this Act, regardless of whether the prosecution was initiated before the
5 effective date of the Act.

6 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

*New Sections attached with memo dated
March 5, 2014*

Alaska State Legislature

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In-State Energy Committee

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Joint Armed Services Committee

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Senator John Coghill

Date: March 5, 2014

To: Kathleen Straasbaugh, Legal Council

From: Rynnieva Moss, Legislative Aide *Rymoss*

Re: SB 187 – 28-LS1145\U - Additional changes to Blank CS

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1. CJA recommends an additional change to Criminal Rule 16(d), which would assist the court process and provide a procedure to file and protect a copy of the sensitive information with the court when necessary to a hearing or trial. This would add a subsection to the rule which would read:

(7) Confidential filing. In the event a party files with the court, or offers as an exhibit in a trial or other hearing, any materials listed in subsection (d)(3)(A)(viii or (xi) of this rule, the party will file the materials in a confidential envelope. For purposes of this section "confidential" is defined by Rule 37.5 of the Alaska Rules of Administrative Procedure.

2. CJA recommends adding another section to the bill which amends Child in Need of Aid Rule 8 to protect sensitive information counsel obtain through discovery in CINA proceedings (in other words, the counterpart to Criminal Rule 16). It would read:

The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 8 of the Alaska Child in Need of Aid Rules is amended to add a new paragraph to read:

(j) Disclosure of recordings and medical records

1) Video, audio recordings, medical records of a child, including photographs produced as part of a medical examination of a child may not be redisclosed by parties to any person except that the material may be disclosed to the party's attorney, the attorney's staff or investigators, and others as necessary for the preparation of the party's case.

2) In the event a party files with the court, or offers as an exhibit in a trial or other hearing, any materials listed in subsection (j) of this rule, the party will file the materials in a confidential envelope. For purposes of this section "confidential" is defined by Rule 37.5 of the Alaska Rules of Administrative Procedure.