

28-LS1145/P
Strasbaugh
4/3/14

HOUSE CS FOR CS FOR SENATE BILL NO. 187()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS COGHILL, McGuire, Bishop, Egan, Meyer, Stedman, Stevens, Micciche, Dunleavy,
Kelly, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of misconduct involving confidential information in the
2 first degree; amending Rule 16, Alaska Rules of Criminal Procedure; amending Rule 8,
3 Alaska Child in Need of Aid Rules; and providing for an effective date."

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

5 * Section 1. AS 11.76.113(a) is amended to read:

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

8 (1) violates AS 11.76.115 and obtains the confidential information
9 with the intent to

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

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

13 (2) publishes or distributes an audio or video recording of an
14 interview of a child for a criminal or child protection investigation, or records of

1 a medical examination of a victim or minor conducted for the purpose of the
2 investigation of an offense under AS 11.41.410 - 11.41.440, 11.41.450, or a child
3 protection investigation, including photographs taken during the examination.

4 * Sec. 2. AS 11.76.113 is amended by adding a new subsection to read:

5 (d) The provisions of (a)(2) of this section do not apply to

6 (A) a person who publishes or distributes a recording, record,
7 or image as permitted or directed under

8 (i) a court order;

9 (ii) a rule of court; or

10 (iii) a federal or state law requiring the publication or
11 distribution; or

12 (B) the use of a recording, record, or image for training by law
13 enforcement officials, prosecutors, or defense counsel, if the identity of the
14 minor or victim is concealed; or

15 (C) a recording, record, or image that is released with the
16 consent of

17 (i) an adult victim or a minor victim for whom the
18 disabilities of minority have been removed for general purposes under
19 AS 09.55.590; or

20 (ii) a minor's parent or guardian unless the parent or
21 guardian is the perpetrator of the abuse or offense about which the
22 recording, record, or image was gathered.

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

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

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

28 (A) Materials furnished to an attorney pursuant to these rules
29 shall be used only for the purpose of conducting the case. The following
30 materials must remain in the custody of the defense attorney, the attorney's
31 staff, investigators, experts, and others as necessary for the preparation of the

1 defendant's case, and shall be subject to other terms and conditions that the
 2 court may provide. The materials listed in this paragraph shall not be provided
 3 to the defendant, but the information in the materials may be shared with the
 4 defendant to the extent necessary to prepare the defense of the case:

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

6 (ii) a medical, psychiatric, psychological, or counseling
 7 record of a victim or witness;

8 (iii) an adoption record;

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

11 (v) a report of a presentence investigation of a victim or
 12 witness prepared pursuant to Criminal Rule 32.1 or a similar law in
 13 another jurisdiction;

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

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

19 (viii) in a prosecution under AS 11.41.410 - 11.41.440
 20 or 11.41.450, an audio or video interview of a victim; and

21 (ix) in a prosecution under AS 11.41.410 - 11.41.440
 22 or 11.41.450, photographs taken during a medical examination of a
 23 victim.

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

31 (C) Notwithstanding a defendant's status as co-counsel,

1 materials covered by subsection (d)(3)(A) shall remain in the custody of the
2 defendant's attorney, the attorney's staff, investigators, experts, and others as
3 necessary for the preparation of the defendant's case, and shall be subject to
4 other terms and conditions that the court may provide.

5 (D) If a defendant is proceeding without counsel, materials
6 covered by subsection (d)(3)(A) may be provided to the defendant. If materials
7 are provided to an unrepresented defendant under this paragraph, the court
8 shall order that the materials remain in the defendant's exclusive custody, be
9 used only for purposes of conducting the case, and be subject to other terms,
10 conditions, and restrictions that the court may provide. Upon a showing of
11 good cause, the court may impose specific terms, conditions, or restrictions
12 concerning inspection of the materials by other persons involved in the
13 preparation of the case, such as staff, investigators, experts, witnesses, or
14 others. The court shall also inform the defendant and such other persons
15 involved in the preparation of the case that violation of an order issued under
16 this paragraph is punishable as a contempt of court and may also constitute a
17 criminal offense.

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

20 DIRECT COURT RULE AMENDMENT. Rule 16(d), Alaska Rules of
21 Criminal Procedure, is amended by adding a new paragraph to read:

22 (7) Confidential filing. A party that files with the court or offers as an
23 exhibit materials listed in subsection (d)(3)(viii) or (d)(3)(ix) of this rule shall file the
24 materials in a confidential envelope. In this paragraph, "confidential" has the meaning
25 given in Rule 37.5, Alaska Rules of Administration.

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

28 DIRECT COURT RULE AMENDMENT. Rule 8, Alaska Child in Need of
29 Aid Rules, is amended by adding new subsections to read:

30 (j) Limitations on disclosure of certain recordings, images, and records.
31 Materials collected during an investigation under AS 47.10.011 or AS 47.14.300 that

1 is also evidence for an investigation under AS 11.41.410 - 11.41.450, furnished to an
2 attorney under these rules shall be used only for the purpose of conducting the case. A
3 video or audio recording or medical record of a child, including a photograph taken
4 during a medical examination of a child, must remain in the custody of a parent's
5 attorney, the attorney's staff, investigators, experts, and others as necessary for the
6 preparation of the parent's case, and shall be subject to other terms and conditions that
7 the court may provide. A video or audio recording or medical record of a child,
8 including a photograph taken during a medical examination of a child, shall not be
9 provided to the parent, but the information in the materials may be shared with the
10 parent to the extent necessary to prepare the defense of the case.

11 (k) If a parent is proceeding without counsel, the materials described in (j) of
12 this section may be provided to the parent. If materials are provided to an
13 unrepresented parent under this subsection, the court shall order that the materials
14 remain in the parent's exclusive custody, be used only for purposes of conducting the
15 case, and be subject to other terms, conditions, and restrictions that the court may
16 provide. Upon a showing of good cause, the court may impose specific terms,
17 conditions, or restrictions concerning inspection of the materials by other persons
18 involved in the preparation of the case, such as staff, investigators, experts, witnesses,
19 or others. The court shall also inform the parent and other persons involved in the
20 preparation of the case that violation of an order issued under this subsection is
21 punishable as a contempt of court and may also constitute a criminal offense.

22 (l) Confidential filing. A party that files with the court or offers as an exhibit
23 materials listed in (j) of this rule shall file the materials in a confidential envelope. In
24 this subsection, "confidential" has the meaning given in Rule 37.5, Alaska Rules of
25 Administration.

26 (m) Notwithstanding another provision of this section, the legal custodian of a
27 child may provide records of a medical examination of a child to the child's treating
28 physician if the records are required for the treatment of the child.

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

31 APPLICABILITY. (a) Sections 1 and 2 of this Act apply to offenses committed on or

1 after the effective date of this Act.

2 (b) Sections 3 - 5 of this Act apply to proceedings pending on or arising after the
3 effective date of this Act, regardless of whether the prosecution was initiated before the
4 effective date of the Act.

5 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).