

CS FOR HOUSE BILL NO. 314(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/2/96

Referred: Rules

Sponsor(s): REPRESENTATIVES PARNELL, Robinson, Bunde, Elton, Toohey, Ivan, Nicholia

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to domestic violence and to crime victims and witnesses; and
2 amending Rule 613, Alaska Rules of Evidence."

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

4 * **Section 1.** AS 11.56.740(a) is amended to read:

5 (a) A person commits the crime of violating a domestic violence restraining
6 order if [(1)] the person knowingly violates a provision of an order issued under
7 AS 25.35.010(b) or 25.35.020

8 (1) restraining the person from communicating directly or indirectly
9 with another;

10 (2) restraining the person from subjecting another to domestic
11 violence;

12 (3) directing the person to vacate the home of another; or

13 (4) restraining the person from entering a propelled vehicle in the
14 possession of or occupied by another [AND (2) AT THE TIME THE

1 RESTRAINING ORDER WAS ISSUED, THE COURT MADE A FINDING THAT
2 THE PERSON HAD SUBJECTED ANOTHER TO DOMESTIC VIOLENCE].

3 * **Sec. 2.** AS 12.61.120(c) is amended to read:

4 (c) If a defendant or a person acting on behalf of a defendant
5 [REPRESENTING THE DEFENDANT, INCLUDING THE DEFENDANT'S
6 ATTORNEY OR A PERSON SPECIFIED BY THE COURT UNDER (b) OF THIS
7 SECTION,] contacts the victim of an offense with which the defendant is or could be
8 charged, the person shall clearly inform the victim

9 (1) of the person's identity and specific association with the defendant;

10 (2) that the victim does not have to talk to the person unless the victim
11 wishes; and

12 (3) that the victim may have a prosecuting attorney or other person
13 present during an interview.

14 * **Sec. 3.** AS 12.61.120 is amended by adding new subsections to read:

15 (d) If a defendant or a person acting on behalf of a defendant wishes to make
16 a recording of statements of the victim of an offense with which the defendant is or
17 could be charged, or of a witness, the person shall, before recording begins, obtain the
18 consent of the victim or witness to record the statement by clearly informing the victim
19 or witness (1) of the information set out in (c) of this section, (2) that the statement will
20 be recorded if the victim or witness consents, and (3) that the victim or witness may
21 obtain a transcript or other copy of the recorded statement upon request. When recording
22 begins, the person making the recording shall indicate in the recording that the victim
23 or witness has been informed as required by this subsection, and the victim or witness
24 shall state in the recording that consent of the victim or witness to the recording has been
25 given.

26 (e) If a victim or witness requests a transcript or other copy of a recorded
27 statement taken under (d) of this section, the defense shall prepare the transcript or other
28 copy and provide it to the person whose statement was recorded.

29 (f) In this section, "recording" means capturing a statement of a person, whether
30 by magnetic tape or other electronic or electromagnetic means.

31 * **Sec. 4.** AS 12.61 is amended by adding new sections to read:

32 Sec. 12.61.125. VICTIMS AND WITNESSES OF SEXUAL OFFENSES. (a)

1 The defendant accused of a sexual offense, the defendant's counsel, or an investigator
2 or other person acting on behalf of the defendant, may not

3 (1) notwithstanding AS 12.61.120, contact the victim of the offense or
4 a witness to the offense if the victim or witness, or the parent or guardian of the victim
5 or witness if the victim or witness is a minor, has informed the defendant or the
6 defendant's counsel in writing or in person that the victim or witness does not wish to
7 be contacted by the defense; a victim or witness who has not informed the defendant or
8 the defendant's counsel in writing or in person that the victim does not wish to be
9 contacted by the defense is entitled to rights as provided in AS 12.61.120;

10 (2) obtain a statement from the victim of the offense or a witness to the
11 offense, unless,

12 (A) if the statement is taken as a recording, the recording is taken
13 in compliance with AS 12.61.120; or

14 (B) if the statement is not taken as a recording, written
15 authorization is first obtained from the victim or witness, or from the parent or
16 guardian of the victim or witness if the victim or witness is a minor; the written
17 authorization must state that the victim or witness is aware that there is no legal
18 requirement that the victim or witness talk to the defense; a victim or witness
19 making a statement under this subparagraph remains entitled to rights as provided
20 in AS 12.61.120.

21 (b) A defendant who is the parent or guardian of a minor victim or witness may
22 not provide the authorization required under (a) of the section.

23 (c) If an attorney, or a person acting on behalf of the defendant for an attorney,
24 violates this section, the court shall refer the violation to the Disciplinary Board of the
25 Alaska Bar Association as a grievance.

26 (d) In this section,

27 (1) "recording" has the meaning given in AS 12.61.120;

28 (2) "sexual offense" means a violation of AS 11.41.410 - 11.41.470.

29 Sec. 12.61.127. INADMISSIBILITY OF STATEMENTS TAKEN IN
30 VIOLATION OF AS 12.61.120 or 12.61.125. A statement obtained from a victim or
31 witness in violation of AS 12.61.120 or 12.61.125 is presumed inadmissible in a
32 prosecution of the defendant. To overcome the presumption of inadmissibility, the

1 defendant must prove by clear and convincing evidence that
2 (1) the statement is reliable;
3 (2) similar evidence is unavailable from any other source; and
4 (3) failure to introduce the statement would substantially undermine the
5 reliability of the fact-finding process and result in manifest injustice.

6 * **Sec. 5.** AS 12.61.900 is amended by adding new paragraphs to read:

7 (3) "person acting on behalf of a defendant" includes the defendant's
8 attorney, an agent of the defendant or the defendant's attorney, or a person specified by
9 the court under AS 12.61.120(b) or an agent of that person, but does not include the
10 defendant;

11 (4) "witness" means a person contacted in connection with a criminal
12 case because the person may have knowledge or information about the criminal case.

13 * **Sec. 6.** AS 12.61.127, added by sec. 4 of this Act, has the effect of amending Rule 613,
14 Alaska Rules of Evidence, relating to impeachment of witnesses.