

**CS FOR HOUSE BILL NO. 314(JUD) am**

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

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Amended: 2/7/96**

**Offered: 2/2/96**

**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 in this or another jurisdiction, or of a witness, the person shall, before  
18 recording begins, obtain the consent of the victim or witness to record the statement by  
19 clearly informing the victim or witness (1) of the information set out in (c) of this  
20 section, (2) that the statement will be recorded if the victim or witness consents, and (3)  
21 that the victim or witness may obtain a transcript or other copy of the recorded statement  
22 upon request. When recording begins, the person making the recording shall indicate in  
23 the recording that the victim or witness has been informed as required by this subsection,  
24 and the victim or witness shall state in the recording that consent of the victim or witness  
25 to the recording has been 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.