

CS FOR HOUSE BILL NO. 245(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/7/97

Referred: Finance

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to minimum sentences for assault in the fourth degree that is
2 a crime involving domestic violence; providing that a prisoner may not contact
3 the victim of the offense when provided access to a telephone or otherwise
4 immediately after an arrest; and amending Rule 5(b), Alaska Rules of Criminal
5 Procedure."

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

7 * Section 1. AS 12.25.150(b) is amended to read:

8 (b) Immediately after an arrest, a prisoner shall have the right to telephone or
9 otherwise communicate with the prisoner's attorney and any relative or friend, **except**
10 **that the prisoner may not communicate with the alleged victim of the crime that**
11 **was the basis of the prisoner's arrest. Any** [AND ANY] attorney at law entitled to
12 practice in the courts of Alaska shall, at the request of the prisoner or any relative or
13 **friend** [FRIENDS] of the prisoner, have the right to immediately visit the person

1 arrested.

2 * **Sec. 2.** AS 12.25.150 is amended by adding a new subsection to read:

3 (e) A person is guilty of a class B misdemeanor if the person is a prisoner and,
4 in exercising a right granted under (b) of this section, communicates or attempts to
5 communicate with the alleged victim of the crime that was the basis of the prisoner's
6 arrest.

7 * **Sec. 3.** AS 12.55.135(c) is amended to read:

8 (c) A defendant convicted of assault in the fourth degree committed in violation
9 of the provisions of an order issued or filed under AS 12.30.025, 12.30.027, or
10 AS 18.66.100 - 18.66.180 and not subject to sentencing under (g) of this section
11 [OR ISSUED UNDER FORMER AS 25.35.010 OR 25.35.020] shall be sentenced to
12 a minimum term of imprisonment of 20 days.

13 * **Sec. 4.** AS 12.55.135 is amended by adding new subsections to read:

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

17 (1) 30 days if the defendant has been previously convicted of a crime
18 against a person or a crime involving domestic violence;

19 (2) 60 days if the defendant has been previously convicted two or more
20 times of a crime against a person or a crime involving domestic violence, or a
21 combination of those crimes.

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

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

25 (2) imposition of sentence may not be suspended;

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

27 (i) In this section,

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

31 (2) "crime involving domestic violence" has the meaning given in

1 AS 18.66.990.

2 * **Sec. 5.** AS 12.55.145(a) is amended to read:

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

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

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

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

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

19 (2) AS 12.55.125(l),

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

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

28 (3) AS 12.55.135(g),

29 (A) a prior conviction may not be considered if a period of
30 five or more years has elapsed between the date of the defendant's
31 unconditional discharge on the immediately preceding offense and

1 commission of the present offense unless the prior conviction was for an
 2 unclassified or class A felony;

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

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

13 * Sec. 6. AS 12.55.145(c) is amended to read:.

14 (c) The defendant shall file with the court and serve on the prosecuting
 15 attorney notice of denial, consisting of a concise statement of the grounds relied upon
 16 and that may be supported by affidavit or other documentary evidence, no later than
 17 10 days before the date set for the imposition of sentence if the defendant

18 (1) denies

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

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

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

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

24 (ii) most serious felony, defined as such under Alaska
 25 law;

26 (iii) crime against a person or a crime involving
 27 domestic violence;

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

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

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

3 * **Sec. 7.** AS 12.55.145(d) is amended to read:

4 (d) Matters alleged in a notice of denial shall be heard by the court sitting
5 without a jury. If the defendant introduces substantial evidence that the defendant is
6 not the person named in a prior judgment of conviction, that the judgment is not
7 authentic, that the conviction did not occur within the period specified in (a)(1)(A) or
8 (3)(A) of this section, that a conviction should not be considered a prior felony
9 conviction under (a)(1)(B) of this section, [OR] a prior most serious felony conviction
10 under (a)(2)(A) of this section, or a prior crime against a person or a crime
11 involving domestic violence conviction under (a)(3)(B) of this section, or that a
12 previous conviction did not occur in the order required under (a)(2)(B) of this section,
13 then the burden is on the state to prove the contrary beyond a reasonable doubt. The
14 burden of proof that two or more convictions should be considered a single conviction
15 under (a)(1)(C) or (3)(C) of this section is on the defendant by clear and convincing
16 evidence.

17 * **Sec. 8.** AS 12.55.145 is amended by adding a new subsection to read:

18 (g) In this section,
19 (1) "crime against a person" has the meaning given in AS 12.55.135(i);
20 (2) "crime involving domestic violence" has the meaning given in
21 AS 18.66.990.

22 * **Sec. 9.** Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

23 (b) **Rights of Prisoner to Communicate With Attorney or Other Person.**
24 Immediately after arrest, the prisoner shall have the right forthwith to telephone or
25 otherwise to communicate with both an attorney and any relative or friend, except that
26 the prisoner may not communicate with the alleged victim of the crime that was
27 the basis of the prisoner's arrest. Any attorney at law entitled to practice in the
28 courts of Alaska, at the request of either the prisoner or any relative or friend of the
29 prisoner, shall have the right forthwith to visit the prisoner in private.

30 * **Sec. 10.** AS 12.55.150(b), as amended by sec. 1 of this Act, amends Rule 5(b), Alaska
31 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate

1 immediately after arrest.

2 * **Sec. 11.** AS 12.55.150(b), as amended by sec. 1 of this Act, and sec. 9 of this Act take
3 effect only if secs. 9 and 10 of this Act receive the two-thirds majority vote of each house
4 required by art. IV, sec. 15, Constitution of the State of Alaska.

5 * **Sec. 12.** References to previous convictions in this Act apply to all convictions occurring
6 before, on, or after the effective date of this Act.