

CS FOR HOUSE BILL NO. 245(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/27/98

Referred: Rules

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the minimum sentences for assault in the fourth degree that
2 is a crime involving domestic violence; relating to the definition of 'crime
3 involving domestic violence' in AS 11; relating to unlawful contact with a victim
4 or witness; and amending Rule 5(b), Alaska Rules of Criminal Procedure."

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

6 * **Section 1.** AS 11.56 is amended by adding a new section to read:

7 **Sec. 11.56.750. Unlawful contact in the first degree.** (a) A person commits
8 the crime of unlawful contact in the first degree if the person

9 (1) has been ordered not to contact a victim or witness of the offense

10 as

11 (A) part of a sentence imposed under AS 12.55.015; or

12 (B) as a condition of

13 (i) release under AS 12.30;

14 (ii) probation under AS 12.55.101; or

1 (iii) parole under AS 33.16.150; and

2 (2) either directly or indirectly, knowingly contacts or attempts to
3 contact the victim or witness in violation of the order.

4 (b) Unlawful contact in the first degree is a class A misdemeanor.

5 * **Sec. 2.** AS 11.56 is amended by adding a new section to read:

6 **Sec. 11.56.755. Unlawful contact in the second degree.** (a) A person
7 commits the crime of unlawful contact in the second degree if

8 (1) the person is arrested for a crime against a person under AS 11.41
9 or a crime involving domestic violence; and

10 (2) before the person's initial appearance before a judge or magistrate
11 or before dismissal of the charge for which the person was arrested, whichever occurs
12 first, the person initiates communication or attempts to initiate communication with the
13 alleged victim of the crime that was the basis for the person's arrest.

14 (b) Unlawful contact with crime victim is a class B misdemeanor.

15 * **Sec. 3.** AS 11.56 is amended by adding a new section to read:

16 **Sec. 11.56.756. Definitions.** In AS 11.56.750 and 11.56.755,

17 (1) "victim" has the meaning given in AS 12.55.185; and

18 (2) "witness" has the meaning given in AS 12.61.900.

19 * **Sec. 4.** AS 11.81.900(b) is amended by adding a new paragraph to read:

20 (60) "crime involving domestic violence" has the meaning given in
21 AS 18.66.990.

22 * **Sec. 5.** AS 12.25.150(b) is amended to read:

23 (b) Immediately after an arrest, a prisoner shall have the right to telephone or
24 otherwise communicate with the prisoner's attorney and any relative or friend, and any
25 attorney at law entitled to practice in the courts of Alaska shall, at the request of the
26 prisoner or any relative or **friend** [FRIENDS] of the prisoner, have the right to
27 immediately visit the person arrested. **This subsection does not provide a prisoner**
28 **with the right to initiate communication or attempt to initiate communication**
29 **under circumstances proscribed under AS 11.56.755.**

30 * **Sec. 6.** AS 12.55.015(a) is amended to read:

31 **Sec. 12.55.015. Authorized sentences; forfeiture.** (a) Except as limited by

1 AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted
2 of an offense, may singly or in combination

3 (1) impose a

4 (A) fine when authorized by law and as provided in
5 AS 12.55.035; or

6 (B) day fine when authorized by law and as provided in
7 AS 12.55.036 [,] if the court does not impose a term of periodic or continuous
8 imprisonment or place the defendant on probation;

9 (2) order the defendant to be placed on probation under conditions
10 specified by the court that may include provision for active supervision;

11 (3) impose a definite term of periodic imprisonment;

12 (4) impose a definite term of continuous imprisonment;

13 (5) order the defendant to make restitution under AS 12.55.045;

14 (6) order the defendant to carry out a continuous or periodic program
15 of community work under AS 12.55.055;

16 (7) suspend execution of all or a portion of the sentence imposed under
17 AS 12.55.080;

18 (8) suspend imposition of sentence under AS 12.55.085;

19 (9) order the forfeiture to the commissioner of public safety or a
20 municipal law enforcement agency of a deadly weapon that was in the actual
21 possession of or used by the defendant during the commission of an offense described
22 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

23 (10) order the defendant, while incarcerated, to participate in or comply
24 with the treatment plan of a rehabilitation program that is related to the defendant's
25 offense or to the defendant's rehabilitation if the program is made available to the
26 defendant by the Department of Corrections;

27 (11) order the forfeiture to the state of a motor vehicle, weapon,
28 electronic communication device, or money or other valuables, used in or obtained
29 through an offense that was committed for the benefit of, at the direction of, or in
30 association with a criminal street gang;

31 **(12) order the defendant to have no contact, either directly or**

1 indirectly, with a victim or witness of the offense until the defendant is
 2 unconditionally discharged.

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

4 (c) A defendant convicted of assault in the fourth degree that is a crime
 5 involving domestic violence committed in violation of the provisions of an order
 6 issued or filed under AS 12.30.027 or AS 18.66.100 - 18.66.180 and not subject to
 7 sentencing under (g) of this section [OR ISSUED UNDER FORMER AS 25.35.010
 8 OR 25.35.020] shall be sentenced to a minimum term of imprisonment of 20 days.

9 * **Sec. 8.** AS 12.55.135 is amended by adding new subsections to read:

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

13 (1) 30 days if the defendant has been previously convicted of a crime
 14 against a person or a crime involving domestic violence;

15 (2) 60 days if the defendant has been previously convicted two or more
 16 times of a crime against a person or a crime involving domestic violence, or a
 17 combination of those crimes.

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

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

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

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

23 (i) In this section,

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

27 (2) "crime involving domestic violence" has the meaning given in
 28 AS 18.66.990.

29 * **Sec. 9.** AS 12.55.145(a) is amended to read:

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

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

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

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

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

15 (2) AS 12.55.125(l),

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

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

24 (3) AS 12.55.135(g),

25 (A) a prior conviction may not be considered if a period of
 26 five or more years has elapsed between the date of the defendant's
 27 unconditional discharge on the immediately preceding offense and
 28 commission of the present offense unless the prior conviction was for an
 29 unclassified or class A felony;

30 (B) a conviction in this or another jurisdiction of an offense
 31 having elements similar to those of a crime against a person or a crime

1 involving domestic violence is considered a prior conviction;

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

9 * **Sec. 10.** AS 12.55.145(c) is amended to read:

10 (c) The defendant shall file with the court and serve on the prosecuting
 11 attorney notice of denial, consisting of a concise statement of the grounds relied upon
 12 and that may be supported by affidavit or other documentary evidence, no later than
 13 10 days before the date set for the imposition of sentence if the defendant

14 (1) denies

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

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

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

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

20 (ii) most serious felony, defined as such under Alaska
 21 law;

22 (iii) crime against a person or a crime involving
 23 domestic violence;

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

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

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

30 * **Sec. 11.** AS 12.55.145(d) is amended to read:

31 (d) Matters alleged in a notice of denial shall be heard by the court sitting

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

13 * **Sec. 12.** AS 12.55.145 is amended by adding a new subsection to read:

14 (g) In this section,

15 (1) "crime against a person" has the meaning given in AS 12.55.135(i);

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

17 AS 18.66.990.

18 * **Sec. 13.** Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

19 (b) **Rights of Prisoner to Communicate With Attorney or Other Person.**

20 Immediately after arrest, the prisoner shall have the right forthwith to telephone or
 21 otherwise to communicate with both an attorney and any relative or friend. Any
 22 attorney at law entitled to practice in the courts of Alaska, at the request of either the
 23 prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit
 24 the prisoner in private. This subsection does not provide a prisoner with the right
 25 to initiate communication or attempt to initiate communication under
 26 circumstances proscribed under AS 11.56.755.

27 * **Sec. 14.** AS 11.56.745(b) is repealed.

28 * **Sec. 15.** AS 12.25.150(b), as amended by sec. 5 of this Act, amends Rule 5(b), Alaska
 29 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
 30 immediately after arrest.

31 * **Sec. 16.** Sections 2, 5, and 13 of this Act take effect only if secs. 13 and 15 of this Act

1 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
2 of the State of Alaska.

3 * **Sec. 17.** References to previous convictions in this Act apply to all convictions occurring
4 before, on, or after the effective date of this Act.