

CS FOR HOUSE BILL NO. 245(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 3/31/98

Referred: Rules

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz, Hodgins

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 domestic violence; relating to**
3 **the definition of 'crime involving domestic violence' in AS 11; relating to unlawful**
4 **contact with a victim or witness; relating to rehabilitation programs for**
5 **perpetrators of domestic violence; amending Rule 5(b), Alaska Rules of Criminal**
6 **Procedure and Rule 404(b), Alaska Rules of Evidence; and providing for an**
7 **effective date."**

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

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

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

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

13 as

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

2 (B) as a condition of

3 (i) release under AS 12.30;

4 (ii) probation under AS 12.55.101; or

5 (iii) parole under AS 33.16.150; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) Immediately after an arrest, a prisoner shall have the right to telephone or
28 otherwise communicate with the prisoner's attorney and any relative or friend, and any
29 attorney at law entitled to practice in the courts of Alaska shall, at the request of the
30 prisoner or any relative or **friend** [FRIENDS] of the prisoner, have the right to
31 immediately visit the person arrested. **This subsection does not provide a prisoner**

with the right to initiate communication or attempt to initiate communication
under circumstances proscribed under AS 11.56.755.

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

Sec. 12.55.015. Authorized sentences; forfeiture. (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

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

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

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

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

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

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

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

(8) suspend imposition of sentence under AS 12.55.085;

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

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

(11) order the forfeiture to the state of a motor vehicle, weapon,

1 electronic communication device, or money or other valuables, used in or obtained
 2 through an offense that was committed for the benefit of, at the direction of, or in
 3 association with a criminal street gang;

4 **(12) order the defendant to have no contact, either directly or**
 5 **indirectly, with a victim or witness of the offense until the defendant is**
 6 **unconditionally discharged.**

7 * **Sec. 7.** AS 12.55.101(a) is amended to read:

8 (a) Before granting probation to a person convicted of a crime involving
 9 domestic violence, the court shall consider the safety and protection of the victim and
 10 any member of the victim's family. If a person convicted of a crime involving
 11 domestic violence is placed on probation, the court may order the conditions
 12 authorized in AS 12.55.100 and AS 18.66.100(c)(1) - (7) and (11), and may

13 (1) require the defendant to participate in and complete to the
 14 satisfaction of the court one or more programs for the rehabilitation of perpetrators of
 15 domestic violence that meet the standards set **by, and that are approved** by, the
 16 Department of Corrections under AS 44.28.020(b) [,] if the program is available in the
 17 community where the defendant resides; **the court may not order a defendant to**
 18 **participate in or complete a program for the rehabilitation of perpetrators of**
 19 **domestic violence that does not meet the standards set, and that is not approved,**
 20 **by the Department of Corrections under AS 44.28.020(b);**

21 (2) require the defendant to refrain from the consumption of alcohol;
 22 and

23 (3) impose any other condition necessary to protect the victim and any
 24 members of the victim's family, or to rehabilitate the defendant.

25 * **Sec. 8.** AS 12.55.135(c) is amended to read:

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

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

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

4 (1) 30 days if the defendant has been previously convicted of a crime
 5 against a person or a crime involving domestic violence;

6 (2) 60 days if the defendant has been previously convicted two or more
 7 times of a crime against a person or a crime involving domestic violence, or a
 8 combination of those crimes.

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

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

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

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

14 (i) In this section,

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

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

20 * **Sec. 10.** AS 12.55.145(a) is amended to read:

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

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

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

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

30 (C) two or more convictions arising out of a single, continuous
 31 criminal episode during which there was no substantial change in the nature of

1 the criminal objective are considered a single conviction unless the defendant
2 was sentenced to consecutive sentences for the crimes; offenses committed
3 while attempting to escape or avoid detection or apprehension after the
4 commission of another offense are not part of the same criminal episode or
5 objective;

6 (2) AS 12.55.125(l),

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

10 (B) commission of and conviction for offenses relied on as prior
11 most serious felony offenses must occur in the following order: conviction for
12 the first offense must occur before commission of the second offense, and
13 conviction for the second offense must occur before commission of the offense
14 for which the defendant is being sentenced;

15 (3) AS 12.55.135(g),

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

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

24 (C) two or more convictions arising out of a single,
25 continuous criminal episode during which there was no substantial change
26 in the nature of the criminal objective are considered a single conviction
27 unless the defendant was sentenced to consecutive sentences for the crimes;
28 offenses committed while attempting to escape or avoid detection or
29 apprehension after the commission of another offense are not part of the
30 same criminal episode or objective.

31 * Sec. 11. AS 12.55.145(c) is amended to read:

1 (c) The defendant shall file with the court and serve on the prosecuting
 2 attorney notice of denial, consisting of a concise statement of the grounds relied upon
 3 and that may be supported by affidavit or other documentary evidence, no later than
 4 10 days before the date set for the imposition of sentence if the defendant

5 (1) denies

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

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

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

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

11 (ii) most serious felony, defined as such under Alaska

12 law;

13 **(iii) crime against a person or a crime involving**
 14 **domestic violence;**

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

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

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

21 * **Sec. 12.** AS 12.55.145(d) is amended to read:

22 (d) Matters alleged in a notice of denial shall be heard by the court sitting
 23 without a jury. If the defendant introduces substantial evidence that the defendant is
 24 not the person named in a prior judgment of conviction, that the judgment is not
 25 authentic, that the conviction did not occur within the period specified in (a)(1)(A) **or**
 26 **(3)(A)** of this section, that a conviction should not be considered a prior felony
 27 conviction under (a)(1)(B) of this section, [OR] a prior most serious felony conviction
 28 under (a)(2)(A) of this section, **or a prior crime against a person or a crime**
 29 **involving domestic violence conviction under (a)(3)(B) of this section,** or that a
 30 previous conviction did not occur in the order required under (a)(2)(B) of this section,
 31 then the burden is on the state to prove the contrary beyond a reasonable doubt. The

1 burden of proof that two or more convictions should be considered a single conviction
2 under (a)(1)(C) or (3)(C) of this section is on the defendant by clear and convincing
3 evidence.

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

5 (g) In this section,

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

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

9 * **Sec. 14.** AS 18.66.100(c)(15) is amended to read:

10 (15) order the respondent, at the respondent's expense, to participate in

11 (A) a program for the rehabilitation of perpetrators of domestic violence that meets the
12 standards set **by, and that is approved** by, the Department of Corrections under
13 AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances,
14 or both; **a protective order under this section may not require a respondent to**
15 **participate in a program for the rehabilitation of perpetrators of domestic**
16 **violence unless the program meets the standards set by, and that is approved by,**
17 **the Department of Corrections under AS 44.28.020(b);**

18 * **Sec. 15.** AS 33.16.150(f) is amended to read:

19 (f) In addition to other conditions of parole imposed under this section, the
20 board may impose as a condition of special medical, discretionary, or mandatory parole
21 for a prisoner serving a term for a crime involving domestic violence (1) any of the
22 terms of protective orders under AS 18.66.100(c)(1) - (7); (2) a requirement that, at
23 the prisoner's expense, the prisoner participate in and complete, to the satisfaction of
24 the board, a program for the rehabilitation of perpetrators of domestic violence that
25 meets the standards set **by, and that is approved** by, the department under
26 AS 44.28.020(b); and (3) any other condition necessary to rehabilitate the prisoner.
27 The board shall establish procedures for the exchange of information concerning the
28 parolee with the victim and for responding to reports of nonattendance or
29 noncompliance by the parolee with conditions imposed under this subsection. **The**
30 **board may not under this subsection require a prisoner to participate in and**
31 **complete a program for the rehabilitation of perpetrators of domestic violence**

1 unless the program meets the standards set by, and is approved by, the
 2 department under AS 44.28.020(b).

3 * **Sec. 16.** AS 44.28.020(b) is amended to read:

4 (b) The department shall, with the approval of the Council on Domestic
 5 Violence and Sexual Assault, adopt standards, by regulation, for rehabilitation
 6 programs for perpetrators of domestic violence as defined in AS 18.66.990. For
 7 purposes of AS 12.55.101, AS 18.66.100(c), and AS 33.16.150(f), the department shall
 8 approve a program if the department determines that the [DETERMINE
 9 WHETHER A] program meets the standards.

10 * **Sec. 17.** Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

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

12 Immediately after arrest, the prisoner shall have the right forthwith to telephone or
 13 otherwise to communicate with both an attorney and any relative or friend. Any
 14 attorney at law entitled to practice in the courts of Alaska, at the request of either the
 15 prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit
 16 the prisoner in private. This subsection does not provide a prisoner with the right
 17 to initiate communication or attempt to initiate communication under
 18 circumstances proscribed under AS 11.56.755.

19 * **Sec. 18.** Rule 404(b)(3), Alaska Rules of Evidence, is amended to read:

20 (3) In a prosecution for a crime of sexual assault in any degree,
 21 evidence of other sexual assaults or attempted sexual assaults by the defendant
 22 against the same or another person is admissible if the defendant relies on a
 23 defense of consent. In a prosecution for a crime of [OR] attempt to commit sexual
 24 assault in any degree, evidence of other sexual assaults or attempted sexual assaults
 25 by the defendant against the same or another person is admissible [IF THE
 26 DEFENDANT RELIES ON A DEFENSE OF CONSENT].

27 * **Sec. 19.** Rule 404(b)(4), Alaska Rules of Evidence, is amended to read:

28 (4) In a prosecution for a crime involving domestic violence or of
 29 interfering with a report of a crime involving domestic violence, evidence of other **acts**
 30 **of** [CRIMES INVOLVING] domestic violence by the defendant against the same or
 31 another person or of interfering with a report of a crime involving domestic violence

1 is admissible. In this paragraph, "domestic violence" and "crime involving domestic
2 violence" have the meanings given in AS 18.66.990.

3 * **Sec. 20.** AS 11.56.745(b) is repealed.

4 * **Sec. 21.** AS 12.25.150(b), as amended by sec. 5 of this Act, amends Rule 5(b), Alaska
5 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
6 immediately after arrest.

7 * **Sec. 22.** Sections 2, 5, and 17 of this Act take effect only if secs. 17 and 21 of this Act
8 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
9 of the State of Alaska.

10 * **Sec. 23.** APPLICABILITY. (a) The changes made by secs. 5, 17, and 21 of this Act
11 apply to persons arrested for offenses occurring before, on, or after the effective date of this
12 Act.

13 (b) Sections 18 and 19 of this Act apply to a criminal or juvenile proceeding held on
14 or after the effective date of secs. 18 and 19 of this Act regardless of whether the criminal
15 offense occurred before, on, or after the effective date of secs. 18 and 19 of this Act.

16 (c) References to previous convictions in this Act apply to all convictions occurring
17 before, on, or after the effective date of this Act.

18 * **Sec. 24.** Sections 7 and 14 - 15 of this Act take effect January 1, 1999.

19 * **Sec. 25.** Except for secs. 7 and 14 - 15, this Act takes effect immediately under
20 AS 01.10.070(c).