

SENATE CS FOR CS FOR HOUSE BILL NO. 245(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 5/6/98

Referred: Finance

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz, Hodgins

SENATOR Phillips

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

11 as

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

13 (B) as a condition of

- 1 (i) release under AS 12.30;
 2 (ii) probation under AS 12.55.101; or
 3 (iii) parole under AS 33.16.150; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (1) impose a

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

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

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

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

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

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

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

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

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

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

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

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

1 association with a criminal street gang;

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

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

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

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

19 (2) require the defendant to refrain from the consumption of alcohol;
 20 and

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

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

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

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

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

1 of

2 (1) 30 days if the defendant has been previously convicted of a crime
3 against a person or a crime involving domestic violence;

4 (2) 60 days if the defendant has been previously convicted two or more
5 times of a crime against a person or a crime involving domestic violence, or a
6 combination of those crimes.

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

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

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

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

12 (i) In this section,

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

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

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

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

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

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

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

28 (C) two or more convictions arising out of a single, continuous
29 criminal episode during which there was no substantial change in the nature of
30 the criminal objective are considered a single conviction unless the defendant
31 was sentenced to consecutive sentences for the crimes; offenses committed

1 while attempting to escape or avoid detection or apprehension after the
 2 commission of another offense are not part of the same criminal episode or
 3 objective;

4 (2) AS 12.55.125(l),

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

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

13 (3) AS 12.55.135(g),

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

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

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

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

30 (c) The defendant shall file with the court and serve on the prosecuting
 31 attorney notice of denial, consisting of a concise statement of the grounds relied upon

1 and that may be supported by affidavit or other documentary evidence, no later than
2 10 days before the date set for the imposition of sentence if the defendant

3 (1) denies

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

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

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

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

9 (ii) most serious felony, defined as such under Alaska
10 law;

11 **(iii) crime against a person or a crime involving**
12 **domestic violence;**

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

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

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

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

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

1 evidence.

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

3 (g) In this section,

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

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

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

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

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

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

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

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

10 **(1) there is good cause for the waiver;**

11 **(2) the safety of victims and children is not compromised by the**
12 **waiver;**

13 **(3) an acceptable alternative is provided by the program.**

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

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

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

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

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

31 * **Sec. 19.** AS 11.56.745(b) is repealed.

1 * **Sec. 20.** AS 12.25.150(b), as amended by sec. 5 of this Act, amends Rule 5(b), Alaska
2 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
3 immediately after arrest.

4 * **Sec. 21.** Sections 2, 5, and 17 of this Act take effect only if secs. 17 and 20 of this Act
5 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
6 of the State of Alaska.

7 * **Sec. 22.** APPLICABILITY. (a) The changes made by secs. 5, 17, and 20 of this Act
8 apply to persons arrested for offenses occurring before, on, or after the effective date of this
9 Act.

10 (b) Section 18 of this Act applies to a criminal or juvenile proceeding held on or after
11 the effective date of sec. 18 of this Act regardless of whether the criminal offense occurred
12 before, on, or after the effective date of sec. 18 of this Act.

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

15 * **Sec. 23.** Sections 7 and 14 - 15 of this Act take effect on the later of (1) January 1,
16 1999, or (2) six months after the effective date of the regulations adopted by the Department
17 of Corrections under AS 44.28.020(b), as amended by sec. 16 of this Act, relating to the
18 approval of rehabilitation programs for perpetrators of domestic violence. The lieutenant
19 governor and the commissioner of corrections shall notify the revisor of statutes when the
20 regulations are filed.

21 * **Sec. 24.** Except for secs. 7 and 14 - 15, this Act takes effect immediately under
22 AS 01.10.070(c).