

CS FOR HOUSE BILL NO. 244(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/12/03

Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Code of Criminal Procedure; relating to rights of prisoners after**
2 **arrest; relating to discovery, immunity from prosecution, notice of defenses,**
3 **admissibility of certain evidence, and right to representation in criminal proceedings;**
4 **relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska**
5 **Rules of Criminal Procedure, and Rules 412, 609, and 803, Alaska Rules of Evidence;**
6 **and providing for an effective date."**

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

8 * **Section 1.** AS 12.25.150(b) is repealed and reenacted to read:

9 (b) Immediately after an arrest, a prisoner has the right to (1) telephone or
10 otherwise communicate with the prisoner's attorney; (2) telephone or otherwise
11 communicate with any relative or friend; (3) an immediate visit from an attorney at
12 law entitled to practice in the courts of Alaska requested by the prisoner or any relative
13 or friend of the prisoner; and (4) a visit from a relative or friend requested by the

1 prisoner. This subsection does not provide a prisoner with the right to initiate
 2 communication or attempt to initiate communication under circumstances proscribed
 3 under AS 11.56.755.

4 * **Sec. 2.** AS 12.50.101(a) is amended to read:

5 (a) If a witness refuses, on the basis of the privilege against self-incrimination,
 6 to testify or provide other information in a criminal proceeding before or ancillary to a
 7 court or grand jury of this state, and a judge issues an order under (b) of this section,
 8 the witness may not refuse to comply with the order on the basis of the privilege
 9 against self-incrimination. If the witness fully complies with the order, **the witness**
 10 **may not be prosecuted for an offense about which the witness is compelled to**
 11 **testify** [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER
 12 THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED
 13 FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED
 14 AGAINST THE WITNESS IN A CRIMINAL CASE], except in a prosecution based
 15 on perjury, giving a false statement [,] or otherwise knowingly providing false
 16 information, or hindering prosecution.

17 * **Sec. 3.** AS 12.55.025(c) is amended to read:

18 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is
 19 sentenced to imprisonment, the term of confinement commences on the date of
 20 imposition of sentence unless the court specifically provides that the defendant must
 21 report to serve the sentence on another date. If the court provides another date to begin
 22 the term of confinement, the court shall provide the defendant with written notice of
 23 the date, time, and location of the correctional facility to which the defendant must
 24 report. A defendant shall receive credit for time spent in custody pending trial,
 25 sentencing, or appeal, if the detention was in connection with the offense for which
 26 sentence was imposed. A defendant may not receive credit for more than the actual
 27 time spent in custody pending trial, sentencing, or appeal. The time during which a
 28 defendant is voluntarily absent from official detention after the defendant has been
 29 sentenced may not be credited toward service of the sentence.

30 * **Sec. 4.** AS 12.55 is amended by adding a new section to read:

31 **Sec. 12.55.127. Consecutive terms of imprisonment.** (a) If a defendant is

1 required to serve a term of imprisonment under a separate judgment, any term of
 2 imprisonment imposed in a later judgment, amended judgment, or probation
 3 revocation shall be consecutive.

4 (b) Except as provided in (c) of this section, if a defendant is being sentenced
 5 for two or more crimes in a single judgment, terms of imprisonment may be
 6 concurrent or partially concurrent.

7 (c) If the defendant is being sentenced for

8 (1) escape, the term of imprisonment shall be consecutive to the term
 9 for the underlying crime;

10 (2) two or more crimes under AS 11.41, a consecutive active term of
 11 imprisonment shall be imposed for at least

12 (A) the mandatory minimum term under AS 12.55.125(a) for
 13 each additional crime that is murder in the first degree;

14 (B) the mandatory minimum term for each additional crime
 15 that is an unclassified felony governed by AS 12.55.125(b);

16 (C) the presumptive term specified in AS 12.55.125(c) or the
 17 active term of imprisonment, whichever is less, for each additional crime that
 18 is

19 (i) manslaughter; or

20 (ii) kidnapping that is a class A felony;

21 (D) two years or the active term of imprisonment, whichever is
 22 less, for each additional crime that is criminally negligent homicide;

23 (E) one-fourth of the presumptive term under AS 12.55.125(c)
 24 or (i) for each additional crime that is sexual assault in the first degree under
 25 AS 11.41.410 or sexual abuse of a minor in the first degree under
 26 AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those
 27 offenses; and

28 (F) some active term of imprisonment for each additional
 29 crime, or each additional attempt or solicitation, under AS 11.41.200 -
 30 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or 11.41.500 -
 31 11.41.520.

1 (d) In this section,

2 (1) "active term of imprisonment" means the total term of
3 imprisonment imposed for a crime, minus suspended imprisonment;

4 (2) "additional crime" means a crime that is not the primary crime;

5 (3) "primary crime" means the crime

6 (A) for which the sentencing court imposes the longest active
7 term of imprisonment; or

8 (B) that is designated by the sentencing court as the primary
9 crime when no single crime has the longest active term of imprisonment.

10 * **Sec. 5.** AS 12.55.145 is amended by adding new subsections to read:

11 (h) For purposes of imposing a sentence under this chapter, a defendant may
12 challenge the legal validity of a prior conviction only if the defendant was denied the
13 right to counsel or the right to a jury trial. The burden of proof for a challenge under
14 this subsection is on the defendant by a preponderance of evidence.

15 (i) In this section,

16 (1) "denied the right to counsel" means that, under the law of the
17 jurisdiction in which the conviction was entered, the defendant had no right to court-
18 appointed counsel and, in that particular case, the defendant did not retain counsel;

19 (2) "right to a jury trial" means that, under the law of the jurisdiction in
20 which the conviction was entered, the defendant was entitled to a trial by a jury of six
21 or more persons.

22 * **Sec. 6.** AS 33.16.090(b) is amended to read:

23 (b) Except as provided in (e) of this section, a prisoner is not eligible for
24 discretionary parole during the term of a presumptive sentence; however, a prisoner is
25 eligible for discretionary parole during a term of sentence enhancement imposed under
26 AS 12.55.155(a) or during the term of a consecutive or partially consecutive
27 presumptive sentence imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)]. A
28 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite
29 term under AS 12.55.125(l) is not eligible for discretionary parole during the entire
30 term.

31 * **Sec. 7.** AS 33.16.090(c) is amended to read:

1 (c) Except as provided in (e) of this section, a prisoner eligible for
 2 discretionary parole during a period of sentence enhancement imposed under
 3 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence
 4 imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)] shall serve the unenhanced
 5 portion of the sentence or the initial presumptive sentence before being otherwise
 6 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this
 7 subsection, the sentence for the most serious offense in the case of consecutive or
 8 partially consecutive presumptive sentences shall be considered the initial presumptive
 9 sentence. The unenhanced sentence or the initial presumptive sentence is considered
 10 served for purposes of discretionary parole on the date the unenhanced or initial
 11 presumptive sentence is due to expire less good time earned under AS 33.20.010.

12 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
 13 read:

14 DIRECT COURT RULE AMENDMENT. Rule 16(c)(5), Alaska Rules of
 15 Criminal Procedure, is amended to read:

16 (5) Notice of Defenses. Unless a different date is set by the court, no
 17 later than **30** [10] days **before** [PRIOR TO] trial, the defendant shall inform the
 18 prosecutor **if** [OF] the **defendant is likely** [DEFENDANT'S INTENTION] to rely
 19 upon a defense of alibi, justification, duress, entrapment, or other statutory or
 20 affirmative defense. Failure to provide [TIMELY] notice **30 days before trial**
 21 **entitles** [UNDER THIS RULE SHALL ENTITLE] the prosecutor to a continuance. If
 22 the court finds that a continuance is not an adequate remedy under the circumstances
 23 of the case, the court may impose other sanctions, including prohibiting the defendant
 24 from asserting the designated defense; **however, if the defendant fails to provide**
 25 **notice at least seven days before trial, the court shall prohibit the defendant from**
 26 **asserting the designated defense.** The defendant shall give notice of an insanity
 27 defense or a defense of diminished capacity due to mental disease or defect in
 28 compliance with AS 12.47.

29 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 16(e)(1), Alaska Rules of

1 Criminal Procedure, is amended to read:

2 (1) Failure to Comply with Discovery Rule or Order. **In addition to**
 3 **any other consequences provided in statute or these rules, if** [IF] at any time
 4 during the course of the proceedings it is brought to the attention of the court that a
 5 party has failed to comply with an applicable discovery rule or an order issued
 6 pursuant thereto, the court shall order such party to permit the discovery of material
 7 and information not previously disclosed or enter such other order as it deems just
 8 under the circumstances.

9 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 10 read:

11 DIRECT COURT RULE AMENDMENT. Rule 16, Alaska Rules of Criminal
 12 Procedure, is amended by adding new subsections to read:

13 (g) **Mandatory Disclosure of Expert Witnesses.**

14 (1) No later than 45 days before the first trial date set by the court, the
 15 prosecution and defense shall provide opposing counsel with the following
 16 information:

17 (A) the prosecution shall provide the defense with the name,
 18 address, telephone number, and curriculum vitae of any expert witness

19 (i) that the prosecution may call at trial or other court
 20 proceeding;

21 (ii) who has performed work, other than solely for the
 22 purpose of trial preparation, in connection with the case;

23 (B) the defense shall provide the prosecution with the name,
 24 address, telephone number, and curriculum vitae of any expert witness that the
 25 defense may call at trial or other court proceeding.

26 (2) At the time of disclosure under (1) of this subsection, each party
 27 shall provide the opposing party with a written report by the expert witness made in
 28 connection with the case. If a written report is not made by the expert, or the written
 29 report does not provide fair notice of the expert's opinion and the basis for the opinion,
 30 counsel shall provide a good faith written description of the substance of the proposed
 31 testimony. The written description may be used for cross-examination of the expert to

1 the same extent as a report by the expert. The written description by counsel shall
2 include the expert's opinion and the basis for the opinion. Upon request, counsel shall
3 make the expert available for a telephonic or in-person deposition or recorded
4 interview, with fees for the expert being paid by the party that has retained the expert.

5 (3) If a party retains an expert in response to discovery exchanged
6 under (1) and (2) of this subsection, the party's counsel shall provide opposing counsel
7 with the information described in (1) of this subsection within 15 days, or 30 days
8 before trial, whichever is later. A written report by the expert or the written
9 description by counsel under (2) of this subsection must be provided to opposing
10 counsel at a time before trial set by the court.

11 (4) The disclosure requirements in this subsection do not apply to
12 peace officers and other crime investigators regarding their on-scene observations, and
13 conclusions drawn from their observations, if (A) their observations are made in the
14 normal course of duties at or near the time of the offense; (B) their conclusions are
15 based on their training and experience; (C) the witness prepared a written report that
16 was exchanged in discovery under this rule; and (D) the prosecution has not
17 designated the officer or investigator as an expert witness. In this paragraph, "other
18 crime investigator" means a person retained or employed by a party to interview
19 witnesses and gather evidence.

20 (5) At any time in the course of the proceedings, if it is brought to the
21 attention of the court that a party has failed to comply with the requirements of this
22 subsection or an order issued under it, the court

23 (A) shall order the nondisclosing party to provide the
24 information required to be disclosed;

25 (B) if requested, shall grant a party a continuance to investigate
26 or otherwise respond to the undisclosed material or information;

27 (C) if disclosure under (1) and (2) of this subsection is not
28 complete within seven days before trial, or disclosure under (3) of this
29 subsection is not made at the time ordered by the court, shall prohibit the
30 nondisclosing party from presenting the witness's testimony.

31 (h) **Definition.** In this rule, if disclosure is required at a specified time before

1 trial, "trial" means the first day of jury selection or, if there is no jury, the first day on
2 which testimony is presented.

3 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DIRECT COURT RULE AMENDMENT. Rule 412, Alaska Rules of
6 Evidence, is amended to read:

7 **Rule 412. Evidence Illegally Obtained.** Evidence illegally obtained shall not
8 be used over proper objection by the defendant in a criminal prosecution for any
9 purpose except:

10 (1) a statement illegally obtained in violation of the right to warnings
11 under *Miranda v. Arizona*, 384 U.S. 436 (1966), may be used in a prosecution for
12 perjury if the statement is relevant to the issue of guilt or innocence **or to impeach the**
13 **person who made the statement** [AND] if the prosecution shows that the statement
14 was otherwise voluntary and not coerced; and

15 (2) other evidence illegally obtained may be admitted in a prosecution
16 for perjury if it is relevant to **the** issue of guilt or innocence **or to impeach a witness**
17 [AND] if the prosecution shows that the evidence was not obtained in substantial
18 violation of rights.

19 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 DIRECT COURT RULE AMENDMENT. Rule 609(b), Alaska Rules of
22 Evidence, is amended to read:

23 (b) **Time Limit.** Evidence of a conviction under this rule is inadmissible if a
24 period of more than five years has elapsed since the date of **unconditional discharge**
25 **from** the conviction. The court may, however, allow evidence of the conviction of the
26 witness other than the accused in a criminal case after more than five years have
27 elapsed if the court is satisfied that admission in evidence is necessary for a fair
28 determination of the case.

29 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 803, Alaska Rules of

1 Evidence, is amended by adding a new paragraph to read:

2 (24) **Domestic Violence Report.** A statement reporting or describing
3 a crime involving domestic violence made within 24 hours of the alleged offense,
4 either by the alleged victim or by another person who saw or heard the offense.

5 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 REPEAL OF COURT RULES. Rules 16(b)(1)(B) and 16(c)(4), Alaska Rules of
8 Criminal Procedure, are repealed.

9 * **Sec. 15.** AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

10 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 APPLICABILITY. (a) The changes made in secs. 4, 6, 7, and 15 of this Act apply to
13 offenses committed on or after the effective date of this Act.

14 (b) The changes made in secs. 1 - 3, 5, and 8 - 14 of this Act apply to criminal
15 proceedings for offenses committed before, on, or after the effective date of this Act.

16 * **Sec. 17.** This Act takes effect July 1, 2003.