

HOUSE BILL NO. 323

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/17/08

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crimes of assault in the fourth degree and of resisting or
2 interfering with arrest; relating to the determination of time of a conviction; relating to
3 offenses concerning controlled substances; relating to issuance of search warrants;
4 relating to persons found incompetent to stand trial concerning criminal conduct;
5 relating to probation and to restitution for fish and game violations; relating to
6 aggravating factors at sentencing; relating to criminal extradition authority of the
7 governor; removing the statutory bar to prosecution of certain crimes; amending Rule
8 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and
9 providing for an effective date."

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

11 * **Section 1.** AS 11.41.230(b) is amended to read:

12 (b) Except as provided in (c) of this section, assault [ASSAULT] in the

1 fourth degree is a class A misdemeanor.

2 * **Sec. 2.** AS 11.41.230 is amended by adding new subsections to read:

3 (c) Assault in the fourth degree is a class C felony if the person

4 (1) is convicted under (a)(1) or (2) of this section; and

5 (2) has been previously convicted of a crime in violation of
6 AS 11.41.100 - 11.41.289 or a similar law in another jurisdiction two or more times
7 within the 10 years preceding the date of the present offense.

8 (d) For purposes of this section, the court shall consider the date of a
9 previous conviction as occurring on the date that sentence is imposed for the
10 previous offense.

11 * **Sec. 3.** AS 11.46.295 is amended to read:

12 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
13 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
14 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
15 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
16 similar elements is a conviction of an offense having elements similar to those of an
17 offense defined as such under Alaska law at the time the offense was committed.

18 **The court shall consider the date of a prior conviction as occurring on the date**
19 **that sentence is imposed for the prior offense.**

20 * **Sec. 4.** AS 11.56.700(a) is amended to read:

21 (a) A person commits the crime of resisting or interfering with arrest if,
22 knowing that a peace officer is making an arrest, with the intent of preventing the
23 officer from making the arrest, the person resists personal arrest or interferes with the
24 arrest of another by

25 (1) force;

26 (2) committing any degree of criminal mischief; [OR]

27 (3) any means that creates a substantial risk of physical injury to any
28 person; **or**

29 **(4) disobeying an order of a peace officer.**

30 * **Sec. 5.** AS 11.71.170(b) is amended by adding new paragraphs to read:

31 (30) carisprodol;

1 (31) zolpidem.

2 * **Sec. 6.** AS 12.35.010(a) is amended to read:

3 (a) A judicial officer may issue a search warrant upon a showing of probable
4 cause, supported by oath or affirmation, and particularly describing the place to be
5 searched and the thing to be seized. **The court may issue a search warrant for a**
6 **place or property located either in the state or outside the state.**

7 * **Sec. 7.** AS 12.35.015(a) is amended to read:

8 (a) A judicial officer may issue a search warrant upon the sworn oral
9 testimony of a person communicated by telephone or other appropriate means, or
10 sworn affidavit transmitted by facsimile machine [, IF THE JUDICIAL OFFICER
11 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

12 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT
13 OR TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD
14 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH
15 WARRANT; AND

16 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
17 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH
18 AN ONGOING INVESTIGATION].

19 * **Sec. 8.** AS 12.47.110(a) is amended to read:

20 (a) When the trial court determines by a preponderance of the evidence, in
21 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant
22 is unable to understand the proceedings against the defendant or to assist in the
23 defendant's own defense, the court shall order the proceedings stayed, except as
24 provided in (d) of this section, and **shall** [MAY] commit the defendant to the custody
25 of the commissioner of health and social services or the commissioner's authorized
26 representative for further evaluation and treatment until the defendant is mentally
27 competent to stand trial, or until the pending charges against the defendant are
28 disposed of according to law, but in no event longer than 90 days.

29 * **Sec. 9.** AS 12.47.110(b) is amended to read

30 (b) On or before the expiration of the initial 90-day period of commitment
31 the court shall conduct a hearing to determine whether or not the defendant remains

1 incompetent. If the court finds by a preponderance of the evidence that the defendant
2 remains incompetent, the court may recommit the defendant for a second period of
3 90 days. The court shall determine at the expiration of the second 90-day period
4 whether the defendant has become competent. If at the expiration of the second 90-
5 day period the court determines that the defendant continues to be incompetent to
6 stand trial, the charges against the defendant shall be dismissed without prejudice
7 and continued commitment of the defendant shall be governed by the provisions
8 relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant
9 is charged with a crime involving force against a person and the court finds that the
10 defendant presents a substantial danger of physical injury to other persons and that
11 there is a substantial probability that the defendant will regain competency within a
12 reasonable period of time, in which case the court may extend the period of
13 commitment for an additional six months. If the defendant remains incompetent at
14 the expiration of the additional six-month period, the charges shall be dismissed
15 without prejudice and [EITHER] civil commitment proceedings shall be instituted
16 [OR THE COURT SHALL ORDER THE RELEASE OF THE DEFENDANT]. If
17 the defendant remains incompetent for five years after the charges have been
18 dismissed under this subsection, the defendant may not be charged again for an
19 offense arising out of the facts alleged in the original charges, except if the original
20 charge is a class A felony or unclassified felony.

21 * **Sec. 10.** AS 12.47.110 is amended by adding a new subsection to read:

22 (e) A defendant found to be incompetent to proceed under this section is
23 rebuttably presumed to be mentally ill and to present a likelihood of serious harm to
24 self or others in proceedings under AS 47.30.700 - 47.30.815. In evaluating whether
25 a defendant is likely to cause serious harm, the court may consider as recent behavior
26 the conduct with which the defendant was originally charged.

27 * **Sec. 11.** AS 12.55.090(a) is amended to read:

28 (a) Probation may be granted whether the offense [CRIME] is punishable by
29 fine or imprisonment or both. If an offense [A CRIME] is punishable by both fine
30 and imprisonment, the court may impose a fine and place the defendant on probation
31 as to imprisonment. Probation may be limited to one or more counts or indictments,

1 but, in the absence of express limitation, shall extend to the entire sentence and
2 judgment.

3 * **Sec. 12.** AS 12.55.135(c) is amended to read:

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

9 * **Sec. 13.** AS 12.55.135(d) is amended to read:

10 (d) A defendant convicted of assault in the fourth degree **that is a**
11 **misdemeanor** or harassment in the first degree who knowingly directed the conduct
12 constituting the offense at

13 (1) a uniformed or otherwise clearly identified peace officer, fire
14 fighter, correctional employee, emergency medical technician, paramedic,
15 ambulance attendant, or other emergency responder or medical professional who was
16 engaged in the performance of official duties at the time of the assault or harassment
17 shall be sentenced to a minimum term of imprisonment of

18 (A) 60 days if the defendant violated AS 11.41.230(a)(1) or

19 (2) or AS 11.61.118;

20 (B) 30 days if the defendant violated AS 11.41.230(a)(3);

21 (2) a person who was on school grounds during school hours or
22 during a school function or a school-sponsored event, on a school bus, at a school-
23 sponsored event, or in the administrative offices of a school district, if students are
24 educated at that office, shall be sentenced to a minimum term of imprisonment of 60
25 days if the defendant violated AS 11.41.230(a)(1) or (2); in this paragraph,

26 (A) "school bus" has the meaning given in AS 11.71.900;

27 (B) "school district" has the meaning given in AS 47.07.063;

28 (C) "school grounds" has the meaning given in AS 11.71.900.

29 * **Sec. 14.** AS 12.55.135(g) is amended to read:

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

1 minimum term of imprisonment 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
5 more times of a crime against a person or a crime involving domestic violence, or a
6 combination of those crimes.

7 * **Sec. 15.** AS 12.55.155(c)(8) is amended to read:

8 (8) the defendant's prior criminal history includes conduct involving
9 aggravated or repeated instances of assaultive behavior; **in this paragraph,**
10 **"aggravated assaultive behavior" means assault that is a felony under AS 11.41,**
11 **or a similar provision in another jurisdiction;**

12 * **Sec. 16.** AS 12.55.155(f) is amended to read:

13 (f) If the state seeks to establish a factor in aggravation at sentencing

14 (1) under (c)(7), (8), (12), (15), **(18)(B)**, (19), (20), (21), or (31) of
15 this section, or if the defendant seeks to establish a factor in mitigation at sentencing,
16 written notice must be served on the opposing party and filed with the court not later
17 than 10 days before the date set for imposition of sentence; the factors in aggravation
18 listed in this paragraph and factors in mitigation must be established by clear and
19 convincing evidence before the court sitting without a jury; all findings must be set
20 out with specificity;

21 (2) other than one listed in (1) of this subsection, the factor shall be
22 presented to a trial jury under procedures set by the court, unless the defendant
23 waives trial by jury, stipulates to the existence of the factor, or consents to have the
24 factor proven under procedures set out in (1) of this subsection; a factor in
25 aggravation presented to a jury is established if proved beyond a reasonable doubt;
26 written notice of the intent to establish a factor in aggravation must be served on the
27 defendant and filed with the court

28 (A) 20 days before trial, or at another time specified by the
29 court;

30 (B) within 48 hours, or at a time specified by the court, if the
31 court instructs the jury about the option to return a verdict for a lesser

1 included offense; or

2 (C) five days before entering a plea that results in a finding of
3 guilt, or at another time specified by the court.

4 * **Sec. 17.** AS 12.70.280(2) is amended to read:

5 (2) "governor" includes

6 (A) a person performing the functions of governor by
7 authority of the law of this state; **and**

8 **(B) a person on the governor's staff appointed by the**
9 **governor to act on behalf of the governor in performing extradition**
10 **duties under this chapter; the appointment shall be in writing and filed**
11 **with the lieutenant governor;**

12 * **Sec. 18.** AS 16.05.925(b) is amended to read:

13 (b) In addition to a penalty imposed under (a) of this section **or any other**
14 **penalty for violation of this title or a regulation adopted under this title,** a person
15 who is convicted of unlawfully taking an animal listed in this subsection may be
16 ordered by the court to pay restitution to the state in the amount set out in this
17 subsection for each animal unlawfully taken:

- 18 (1) Bear, black \$ 600
- 19 (2) Bear, brown or grizzly 1,300
- 20 (3) Bison 1,300
- 21 (4) Caribou..... 850
- 22 (5) Deer..... 400
- 23 (6) Elk 800
- 24 (7) Goat..... 800
- 25 (8) Moose..... 1,000
- 26 (9) Musk oxen..... 3,000
- 27 (10) Sheep..... 1,100
- 28 (11) Wolf 500
- 29 (12) Wolverine..... 500.

30 * **Sec. 19.** AS 47.30.780 is amended to read:

31 **Sec. 47.30.780. Early discharge. Except as provided in (b) of this section,**

1 **the** [THE] professional person in charge shall at any time discharge a respondent on
 2 the ground that the respondent is no longer gravely disabled or likely to cause serious
 3 harm as a result of mental illness. A certificate to this effect shall be sent to the court
 4 which shall enter an order officially terminating the involuntary commitment.

5 * **Sec. 20.** AS 47.30.780 is amended to add a new subsection to read:

6 (b) The professional person in charge shall give the prosecuting authority 10
 7 days notice before discharging a respondent who was committed after having been
 8 found incompetent to proceed under AS 12.47.110.

9 * **Sec. 21.** AS 11.71.310, AS 12.20.010, and AS 12.35.015(f) are repealed.

10 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section
 11 to read:

12 DIRECT COURT RULE AMENDMENT. Rule 37(b), Alaska Rules of
 13 Criminal Procedure, is amended to read:

14 (b) **Execution and Return with Inventory.** The warrant shall be executed
 15 and returned within **a reasonable time** [10 DAYS] after its date **as determined by**
 16 **the court based on the circumstances of the investigation.** **Upon** [HOWEVER,
 17 UPON] sworn application made before the expiration of the initial [10 DAY] period
 18 or any subsequent extension, the court may for good cause extend the execution
 19 period for a reasonable time [NOT TO EXCEED 10 DAYS]. **Good cause includes**
 20 **protecting the confidentiality of an ongoing investigation and protecting a**
 21 **person working with law enforcement authorities on an investigation.** The
 22 officer taking property under the warrant

23 (1) shall give to the person from whom or from whose premises the
 24 property was taken a copy of the warrant, a copy of the supporting affidavits, and
 25 receipt for the property taken, or

26 (2) shall leave the copies and the receipt at the place from which the
 27 property was taken.

28 The return shall be made promptly and shall be accompanied by a written
 29 inventory of any property taken as a result of the search pursuant to or in conjunction
 30 with the warrant. The inventory shall be made in the presence of the applicant for
 31 the warrant and the person from whose possession or premises the property was

1 taken, if they are present, or in the presence of at least one credible person other than
2 the applicant for the warrant or the person from whose possession or premises the
3 property was taken, and shall be signed by the officer under the penalty of perjury
4 pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a notary
5 public. The magistrate or judge or the court to which the return is made shall upon
6 request deliver a copy of the inventory to the person from whom or from whose
7 premises the property was taken and to the applicant for the warrant.

8 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

10 APPLICABILITY. (a) Sections 1, 2, 4, 5, 11 - 16, 18, and 21 of this Act apply to an
11 offense occurring on or after the effective date of this Act.

12 (b) Section 3 of this Act applies to an offense occurring before, on, or after the
13 effective date of this Act.

14 (c) Sections 6, 7, and 22 of this Act apply to search warrants applied for on or after
15 the effective date of this Act, regardless of whether the offense occurred before, on, or after
16 the effective date of this Act.

17 (d) Sections 8 - 10, 19, and 20 of this Act apply to procedures occurring after the
18 effective date of this Act, regardless of whether the offense occurred before, on, or after the
19 effective date of this Act.

20 (e) Section 17 of this Act applies to applications for criminal extraditions submitted
21 on or after the effective date of this Act, regardless of whether the offense occurred before,
22 on, or after the effective date of this Act.

23 * **Sec. 24.** This Act takes effect July 1, 2008.