

CS FOR SENATE BILL NO. 187(JUD)(title am)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 3/26/14

Offered: 3/18/14

Sponsor(s): SENATORS COGHILL, McGuire, Bishop, Egan, Meyer, Stedman, Stevens, Micciche, Dunleavy, Kelly, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of misconduct involving confidential information in the
2 first degree; amending Rule 16, Alaska Rules of Criminal Procedure; amending Rule 8,
3 Alaska Child in Need of Aid Rules; and providing for an effective date."

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

5 * **Section 1.** AS 11.76.113(a) is amended to read:

6 (a) A person commits the crime of misconduct involving confidential
7 information in the first degree if the person

8 **(1)** violates AS 11.76.115 and obtains the confidential information
9 with the intent to

10 **(A)** [(1)] use the confidential information to commit a crime; or

11 **(B)** [(2)] obtain a benefit to which the person is not entitled, to
12 injure another person, or to deprive another person of a benefit; **or**

13 **(2)** **publishes or distributes an audio or video recording of an**
14 **interview of a child for a criminal or child protection investigation, or records of**

1 **a medical examination of a victim or minor conducted for the purpose of the**
 2 **investigation of an offense under AS 11.41.410 - 11.41.440, 11.41.450, or a child**
 3 **protection investigation, including photographs taken during the examination.**

4 * **Sec. 2.** AS 11.76.113 is amended by adding a new subsection to read:

5 (d) The provisions of (a)(2) of this section do not apply to

6 (A) a person who publishes or distributes a recording, record,
 7 or image as permitted or directed under

8 (i) a court order;

9 (ii) a rule of court; or

10 (iii) a federal or state law requiring the publication or
 11 distribution; or

12 (B) the use of a recording, record, or image for training by law
 13 enforcement officials, prosecutors, or defense counsel, if the identity of the
 14 minor or victim is concealed; or

15 (C) a recording, record, or image that is released with the
 16 consent of

17 (i) an adult victim or a minor victim for whom the
 18 disabilities of minority have been removed for general purposes under
 19 AS 09.55.590; or

20 (ii) a minor's parent or guardian unless the parent or
 21 guardian is the perpetrator of the abuse or offense about which the
 22 recording, record, or image was gathered.

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

25 **DIRECT COURT RULE AMENDMENT.** Rule 16(d)(3), Alaska Rules of
 26 Criminal Procedure, is amended to read

27 (3) Materials to Remain in Custody of Attorney.

28 (A) Materials furnished to an attorney pursuant to these rules
 29 shall be used only for the purpose of conducting the case. The following
 30 materials must remain in the custody of the defense attorney, the attorney's
 31 staff, investigators, experts, and others as necessary for the preparation of the

1 defendant's case, and shall be subject to other terms and conditions that the
 2 court may provide. The materials listed in this paragraph shall not be provided
 3 to the defendant, but the information in the materials may be shared with the
 4 defendant to the extent necessary to prepare the defense of the case:

5 (i) a criminal history record of a victim or witness;

6 (ii) a medical, psychiatric, psychological, or counseling
 7 record of a victim or witness;

8 (iii) an adoption record;

9 (iv) a record that is confidential under AS 47.12.300 or
 10 a similar law in another jurisdiction;

11 (v) a report of a presentence investigation of a victim or
 12 witness prepared pursuant to Criminal Rule 32.1 or a similar law in
 13 another jurisdiction;

14 (vi) a record of the Department of Corrections other
 15 than the defendant's own file and any other incident report relating to
 16 the crime with which the defendant is charged; [AND]

17 (vii) any other record that the court orders be kept in the
 18 exclusive custody of the attorney;

19 **(viii) in a prosecution under AS 11.41.410 - 11.41.440**
 20 **or 11.41.450, an audio or video interview of a victim; and**

21 **(ix) in a prosecution under AS 11.41.410 - 11.41.440**
 22 **or 11.41.450, photographs taken during a medical examination of a**
 23 **victim.**

24 (B) An attorney shall not disclose to a defendant the residence
 25 or business address or telephone number of a victim or witness, obtained from
 26 information provided under this rule, even if the defendant is acting as co-
 27 counsel. If the address and telephone numbers of all victims and witnesses
 28 have been obliterated, materials that had contained the address or telephone
 29 number of a victim or witness may be provided to a defendant proceeding
 30 without counsel only as allowed by AS 12.61.120.

31 (C) Notwithstanding a defendant's status as co-counsel,

1 materials covered by subsection (d)(3)(A) shall remain in the custody of the
 2 defendant's attorney, the attorney's staff, investigators, experts, and others as
 3 necessary for the preparation of the defendant's case, and shall be subject to
 4 other terms and conditions that the court may provide.

5 (D) If a defendant is proceeding without counsel, materials
 6 covered by subsection (d)(3)(A) may be provided to the defendant. If materials
 7 are provided to an unrepresented defendant under this paragraph, the court
 8 shall order that the materials remain in the defendant's exclusive custody, be
 9 used only for purposes of conducting the case, and be subject to other terms,
 10 conditions, and restrictions that the court may provide. Upon a showing of
 11 good cause, the court may impose specific terms, conditions, or restrictions
 12 concerning inspection of the materials by other persons involved in the
 13 preparation of the case, such as staff, investigators, experts, witnesses, or
 14 others. The court shall also inform the defendant and such other persons
 15 involved in the preparation of the case that violation of an order issued under
 16 this paragraph is punishable as a contempt of court **and may also constitute a**
 17 **criminal offense.**

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

20 DIRECT COURT RULE AMENDMENT. Rule 16(d), Alaska Rules of
 21 Criminal Procedure, is amended by adding a new paragraph to read:

22 (7) Confidential filing. A party that files with the court or offers as an
 23 exhibit materials listed in subsection (d)(3)(viii) or (d)(3)(ix) of this rule shall file the
 24 materials in a confidential envelope. In this paragraph, "confidential" has the meaning
 25 given in Rule 37.5, Alaska Rules of Administration.

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

28 DIRECT COURT RULE AMENDMENT. Rule 8, Alaska Child in Need of
 29 Aid Rules, is amended by adding new subsections to read:

30 (j) Limitations on disclosure of certain recordings, images, and medical
 31 records. A party to a child in need of aid proceeding may disclose a video or audio

1 recording or medical record of a child, including a photograph taken during a medical
2 examination of a child, only to the party's attorney, the attorney's staff or investigator,
3 or a party's expert witness, and only as necessary for the preparation of the case.

4 (k) Confidential filing. A party that files with the court or offers as an exhibit
5 materials listed in (j) of this rule shall file the materials in a confidential envelope. In
6 this paragraph, "confidential" has the meaning given in Rule 37.5, Alaska Rules of
7 Administration.

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

10 APPLICABILITY. (a) Sections 1 and 2 of this Act apply to offenses committed on or
11 after the effective date of this Act.

12 (b) Sections 3 - 5 of this Act apply to criminal proceedings pending on or arising after
13 the effective date of this Act, regardless of whether the prosecution was initiated before the
14 effective date of the Act.

15 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).