

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS)

**HOUSE CS FOR CS FOR SENATE BILL NO. 187(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/13/14

Referred: Rules

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

REPRESENTATIVE LeDoux

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

8 (A) a court order;

9 (B) a rule of court; or

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

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

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

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

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

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

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

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

26 (A) Materials furnished to an attorney pursuant to these rules  
 27 shall be used only for the purpose of conducting the case. The following  
 28 materials must remain in the custody of the defense attorney, the attorney's  
 29 staff, investigators, experts, and others as necessary for the preparation of the  
 30 defendant's case, and shall be subject to other terms and conditions that the  
 31 court may provide. The materials listed in this paragraph shall not be provided

1 to the defendant, but the information in the materials may be shared with the  
2 defendant to the extent necessary to prepare the defense of the case:

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

4 (ii) a medical, psychiatric, psychological, or counseling  
5 record of a victim or witness;

6 (iii) an adoption record;

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

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

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

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

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

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

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

29 (C) Notwithstanding a defendant's status as co-counsel,  
30 materials covered by subsection (d)(3)(A) shall remain in the custody of the  
31 defendant's attorney, the attorney's staff, investigators, experts, and others as

1 necessary for the preparation of the defendant's case, and shall be subject to  
2 other terms and conditions that the court may provide.

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

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

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

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

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

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

28 (j) Limitations on disclosure of certain recordings, images, and records that  
29 are also evidence for an investigation under AS 11.41.410 - 11.41.450. Materials  
30 collected during an investigation under AS 47.10.011 or AS 47.14.300 that are also  
31 evidence for an investigation under AS 11.41.410 - 11.41.450 furnished to an attorney

1 under these rules shall be used only for the purpose of conducting the case. A video or  
2 audio recording or medical record of a child, including a photograph taken during a  
3 medical examination of a child, must remain in the custody of a parent's attorney, the  
4 attorney's staff, investigators, experts, and others as necessary for the preparation of  
5 the parent's case, and shall be subject to other terms and conditions that the court may  
6 provide. A video or audio recording or medical record of a child, including a  
7 photograph taken during a medical examination of a child, shall not be provided to the  
8 parent, but the information in the materials may be shared with the parent to the extent  
9 necessary to prepare the defense of the case.

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

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

25 (m) Notwithstanding another provision of this section, the legal custodian of a  
26 child may provide records of a medical examination of a child to the child's treating  
27 health care provider if the records are required for the treatment of the child. In this  
28 subsection, "health care provider" includes a physician, dentist, physician assistant,  
29 nurse, nurse practitioner, psychologist, counselor, marital and family therapist, village  
30 or community health aide, community health worker, or another person that provides  
31 health care treatment in the course and scope of the person's employment.

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

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

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

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