

**HOUSE BILL NO. 64**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES TOOHEY, Phillips, Olberg, Ulmer, Hudson**

**Introduced: 1/15/93**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act creating the crimes of stalking in the first and second degrees and  
2 providing penalties for their violation; providing a peace officer with the authority  
3 to arrest without a warrant a person the peace officer has reasonable cause to  
4 believe has committed stalking; relating to the release before trial of a person  
5 accused of stalking; and prohibiting the suspension of imposition of sentence of  
6 a person convicted of stalking."

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

8 \* Section 1. AS 11.41 is amended by adding new sections to article 2 to read:

9           Sec. 11.41.260. STALKING IN THE FIRST DEGREE. (a) A person commits  
10           the crime of stalking in the first degree if the person violates AS 11.41.270 and

11                       (1) the actions constituting the offense are in violation of an order  
12           issued under AS 25.35.010(b) or 25.35.020 and the defendant has received actual  
13           notice of the order;

1 (2) the actions constituting the offense are in violation of a condition  
2 of probation, release before trial, release after conviction, or parole;

3 (3) the course of conduct engaged in by the defendant includes the  
4 making of one or more credible threats against the victim, a member of the victim's  
5 immediate family, or another person living in the victim's household; or

6 (4) the defendant has been previously convicted of a violation of this  
7 section, AS 11.41.270, or AS 11.56.740.

8 (b) Stalking in the first degree is a class C felony.

9 (c) In this section,

10 (1) "course of conduct" has the meaning given in AS 11.41.270(e);

11 (2) "credible threat" means a threat to kill another person or a threat  
12 to inflict physical injury upon another person that is made in any manner or context  
13 that causes the person hearing or receiving the threat to reasonably fear for the  
14 person's safety or the safety of another person;

15 (3) "victim" has the meaning given in AS 11.41.270(e).

16 Sec. 11.41.270. STALKING IN THE SECOND DEGREE. (a) A person  
17 commits the crime of stalking in the second degree if the person knowingly engages  
18 in a course of conduct that would cause a reasonable person to feel threatened or  
19 harassed, and that actually causes the victim to feel threatened or harassed.

20 (b) In a prosecution under this section, evidence that the defendant continued  
21 to engage in a course of conduct involving repeated nonconsensual contact with the  
22 victim after having been requested by the victim to discontinue the same or a different  
23 form of nonconsensual contact, and to refrain from any further contact without the  
24 consent of the victim, shall give rise to a rebuttable presumption that the continuation  
25 of the course of conduct caused the victim to feel threatened or harassed.

26 (c) It is an affirmative defense to a prosecution under this section that the  
27 course of conduct engaged in by the defendant is constitutionally protected or serves  
28 a legitimate purpose. If a defendant affirmatively shows that an act of the defendant  
29 is a constitutionally protected activity or serves a legitimate purpose, that act may not  
30 be considered in finding that a defendant engaged in a course of conduct in violation  
31 of this section.

1 (d) Stalking in the second degree is a class A misdemeanor.

2 (e) In this section,

3 (1) "course of conduct" means a pattern of conduct directed toward a  
4 victim, evidencing a continuity of purpose, that is composed of a series of two or more  
5 separate noncontinuous acts of nonconsensual contact involving the victim, a member  
6 of the victim's immediate family, or another person living in the victim's household;

7 (2) "nonconsensual contact" means any contact with another person that  
8 is initiated or continued without that person's consent, that is beyond the scope of the  
9 consent provided by that person, or that is in disregard of that person's expressed  
10 desire that the contact be avoided or discontinued; "nonconsensual contact" includes

11 (A) following or appearing within the sight of that person;

12 (B) approaching or confronting that person in a public place or  
13 on private property;

14 (C) appearing at the workplace or residence of that person;

15 (D) entering onto or remaining on property owned, leased, or  
16 occupied by that person;

17 (E) contacting that person by telephone;

18 (F) sending mail or electronic communications to that person;

19 (G) placing an object on, or delivering an object to, property  
20 owned, leased, or occupied by that person;

21 (3) "victim" means a person who is the target of a course of conduct.

22 \* Sec. 2. AS 12.25.030(b) is amended to read:

23 (b) In addition to the authority granted under (a) of this section, a peace officer  
24 without a warrant may arrest a person when the peace officer has reasonable cause for  
25 believing that the person has committed a crime under

26 (1) AS 11.41.270 or AS 11.56.740; or

27 (2) AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an  
28 ordinance with elements substantially similar to the elements of a crime under  
29 AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former  
30 spouse of the person who committed the crime; a parent, grandparent, child, or  
31 grandchild of the person who committed the crime; a member of the social unit

1 comprised of those living together in the same dwelling as the person who committed  
2 the crime; or another person who is not a spouse or former spouse of the person who  
3 committed the crime but who previously lived in a spousal relationship with the person  
4 who committed the crime or is in or has been in a dating, courtship, or engagement  
5 relationship with the person who committed the crime.

6 \* Sec. 3. AS 12.30.025 is amended to read:

7 Sec. 12.30.025. **RELEASE BEFORE TRIAL IN CASES INVOLVING**  
8 **DOMESTIC VIOLENCE OR STALKING**. (a) In determining the conditions of  
9 release under AS 12.30.020 in cases involving domestic violence or stalking, the court  
10 shall consider the following conditions and impose one or more conditions it considers  
11 reasonably necessary to protect the alleged victim of the domestic violence or  
12 stalking, including ordering the defendant

13 (1) not to subject the victim to further domestic violence or stalking;

14 (2) to vacate the home of the victim;

15 (3) not to contact the victim other than through counsel;

16 (4) to engage in counseling; if the court directs the defendant to engage  
17 in personal counseling, the court shall provide in the order that the counseling must  
18 propose alternatives to aggression if that type of counseling is available; if the court  
19 directs the defendant to participate in family counseling, it shall make a finding that  
20 family counseling will not result in additional domestic violence or stalking;

21 (5) to refrain from the consumption of alcohol or the use of drugs.

22 (b) As used in this section,

23 (1) "domestic violence" means a crime specified in AS 11.41 when the  
24 victim is a spouse or a former spouse of the defendant; a parent, grandparent, child,  
25 or grandchild of the defendant; a member of the social unit comprised of those living  
26 together in the same dwelling as the defendant; or a person who is not a spouse or  
27 former spouse of the defendant but who previously lived in a spousal relationship with  
28 the defendant or is in or has been in a dating, courtship, or engagement relationship  
29 with the defendant;

30 (2) "stalking" means a violation of AS 11.41.260 or 11.41.270.

31 \* Sec. 4. AS 12.55.085(f) is amended to read:

1 (f) The court may not suspend the imposition of sentence of a person who  
2 (1) is convicted of a violation of AS 11.41.410 - 11.41.455;  
3 (2) uses a firearm in the commission of the offense for which the  
4 person is convicted; or  
5 (3) is convicted of a violation of AS 11.41.210 - 11.41.270  
6 [AS 11.41.210 - 11.41.250] or 11.41.510 - 11.41.530, and the person has, within the  
7 10 years preceding the commission of the offense for which the person has been  
8 convicted, one or more prior convictions for a violation of AS 11.41 or for a violation  
9 of a law in this or another jurisdiction having substantially similar elements to an  
10 offense defined in AS 11.41; for the purposes of this paragraph, a person shall be  
11 considered to have a prior conviction even if that conviction has been set aside under  
12 (e) of this section or under the equivalent provision of the laws of another jurisdiction.

13 \* Sec. 5. AS 12.55.090(c) is amended to read:

14 (c) Except as provided in (f) of this section, the [THE] period of probation,  
15 together with any extension, shall not exceed five years.

16 \* Sec. 6. AS 12.55.090 is amended by adding a new subsection to read:

17 (f) Notwithstanding (c) of this section, for a violation of AS 11.41.260 the  
18 period of probation may not be less than five years nor more than 99 years.

19 \* Sec. 7. AS 12.55.100 is amended by adding a new subsection to read:

20 (d) In addition to any other condition of probation permitted under this section,  
21 a defendant convicted of a violation of AS 11.41.260 or 11.41.270 may be required to

22 (1) refrain from stalking any person during the term of probation;

23 (2) refrain from any contact with the victim of the offense;

24 (3) be evaluated to determine the need for psychiatric, psychological,  
25 or social counseling, and if determined appropriate by the court, receive psychiatric,  
26 psychological, or social counseling at the defendant's expense.

27 \* Sec. 8. APPLICABILITY. AS 11.41.260 and 11.41.270, enacted by sec. 1 of this Act,  
28 apply to acts committed on or after the effective date of this Act.