

SENATE CS FOR CS FOR HOUSE BILL NO. 64(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/23/93
Referred: RULES

Sponsor(s): REPRESENTATIVES TOOHEY, Phillips, Olberg, Ulmer, Hudson, Porter, B.Davis,
Mackie, Carney, Nordlund, Parnell, Sitton, Brown

SENATORS Leman, Ellis, Donley, Little, Salo, Pearce

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; prohibiting the suspension of imposition of sentence of a
6 person convicted of stalking; relating to the crime of assault in the third degree;
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

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

12 (1) the actions constituting the offense are in violation of an order
13 issued under AS 25.35.010(b) or 25.35.020;

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 victim is under 16 years of age;

4 (4) at any time during the course of conduct constituting the offense
5 the defendant possessed a deadly weapon;

6 (5) the defendant has been previously convicted of a crime under this
7 section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another
8 jurisdiction with elements similar to a crime under this section, AS 11.41.270, or
9 AS 11.56.740; or

10 (6) the defendant has been previously convicted of (A) a crime, or an
11 attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 -
12 11.41.460, AS 11.56.810, AS 11.61.120, or (B) a law or an ordinance of this or
13 another jurisdiction with elements similar to a crime, or an attempt or solicitation to
14 commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460,
15 AS 11.56.810, or AS 11.61.120, involving the same victim as the present offense.

16 (b) In this section, "course of conduct" and "victim" have the meanings given
17 in AS 11.41.270(b).

18 (c) Stalking in the first degree is a class C felony.

19 Sec. 11.41.270. STALKING IN THE SECOND DEGREE. (a) A person
20 commits the crime of stalking in the second degree if the person knowingly engages
21 in a course of conduct that recklessly places another person in fear of death or physical
22 injury, or in fear of the death or physical injury of a family member.

23 (b) It is an affirmative defense to a prosecution under this section or
24 AS 11.41.260 that the course of conduct engaged in by the defendant is
25 constitutionally protected. If a defendant affirmatively shows that an act of the
26 defendant is a constitutionally protected activity, that act may not be considered in
27 finding that a defendant engaged in a course of conduct in violation of this section.
28 Whether an act of the defendant is a constitutionally protected activity is a question
29 of law to be determined by the court prior to trial.

30 (c) In this section,

31 (1) "course of conduct" means repeated acts of nonconsensual contact

1 involving the victim or a family member;

2 (2) "family member" means a

3 (A) spouse, child, grandchild, parent, grandparent, sibling, uncle,
4 aunt, nephew, or niece, of the victim, whether related by blood, marriage, or
5 adoption;

6 (B) person who lives, or has previously lived, in a spousal
7 relationship with the victim;

8 (C) person who lives in the same household as the victim; or

9 (D) person who is a former spouse of the victim or is or has
10 been in a dating, courtship, or engagement relationship with the victim;

11 (3) "nonconsensual contact" means any contact with another person that
12 is initiated or continued without that person's consent, that is beyond the scope of the
13 consent provided by that person, or that is in disregard of that person's expressed
14 desire that the contact be avoided or discontinued; "nonconsensual contact" includes

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

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

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

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

21 (E) contacting that person by telephone;

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

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

25 (4) "victim" means a person who is the target of a course of conduct.

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

27 * Sec. 2. AS 11.41.220(a) is amended to read:

28 (a) A person commits the crime of assault in the third degree if that person

29 (1) recklessly

30 (A) [(1)] places another person in fear of imminent serious
31 physical injury by means of a dangerous instrument;

1 **(B) [(2)]** causes physical injury to another person by means of
2 a dangerous instrument; or

3 **(C) [(3)]** while being 18 years of age or older

4 **(i) [(A)]** causes physical injury to a child under 10 years
5 of age and the injury reasonably requires medical treatment;

6 **(ii) [(B)]** causes physical injury to a child under 10 years
7 of age on more than one occasion; or

8 **(2) with intent to place another person in fear of death or serious**
9 **physical injury to the person or the person's family member makes repeated**
10 **threats to cause death or serious physical injury to another person.**

11 * Sec. 3. AS 11.41.220 is amended by adding a new subsection to read:

12 (c) In this section, "the person's family member" means

13 (1) a spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt,
14 nephew, or niece, of the person, whether related by blood, marriage, or adoption;

15 (2) a person who lives or has lived, in a spousal relationship with the
16 person;

17 (3) a person who lives in the same household as the person; or

18 (4) a person who is a former spouse of the person or is or has been in
19 a dating, courtship, or engagement relationship with the person.

20 * Sec. 4. AS 11.56.810(a) is amended to read:

21 (a) A person commits the crime of terroristic threatening if the person

22 [(1)] knowingly makes a false report that a circumstance dangerous to
23 human life exists or is about to exist and

24 **(1) [(A)]** places a person in fear of physical injury to any
25 person;

26 **(2) [(B)]** causes evacuation of a building; or

27 **(3) [(C)]** causes serious public inconvenience [; OR

28 **(2) WITH INTENT TO PLACE ANOTHER PERSON IN FEAR OF**
29 **DEATH OR SERIOUS PHYSICAL INJURY TO THE PERSON OR THE PERSON'S**
30 **IMMEDIATE FAMILY, MAKES REPEATED THREATS TO CAUSE DEATH OR**
31 **SERIOUS PHYSICAL INJURY TO ANOTHER PERSON].**

1 * Sec. 5. AS 12.25.030(b) is amended to read:

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

5 (1) AS 11.41.270 or AS 11.56.740; or

6 (2) AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an
7 ordinance with elements substantially similar to the elements of a crime under
8 AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former
9 spouse of the person who committed the crime; a parent, grandparent, child, or
10 grandchild of the person who committed the crime; a member of the social unit
11 comprised of those living together in the same dwelling as the person who committed
12 the crime; or another person who is not a spouse or former spouse of the person who
13 committed the crime but who previously lived in a spousal relationship with the person
14 who committed the crime or is in or has been in a dating, courtship, or engagement
15 relationship with the person who committed the crime.

16 * Sec. 6. AS 12.30.025 is amended to read:

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

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

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

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

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

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

1 (b) As used in this section,

2 (1) "domestic violence" means a crime specified in AS 11.41 when the
3 victim is a spouse or a former spouse of the defendant; a parent, grandparent, child,
4 or grandchild of the defendant; a member of the social unit comprised of those living
5 together in the same dwelling as the defendant; or a person who is not a spouse or
6 former spouse of the defendant but who previously lived in a spousal relationship with
7 the defendant or is in or has been in a dating, courtship, or engagement relationship
8 with the defendant;

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

10 * Sec. 7. AS 12.55.085(f) is amended to read:

11 (f) The court may not suspend the imposition of sentence of a person who

12 (1) is convicted of a violation of AS 11.41.410 - 11.41.455;

13 (2) uses a firearm in the commission of the offense for which the
14 person is convicted; or

15 (3) is convicted of a violation of AS 11.41.210 - 11.41.270
16 [AS 11.41.210 - 11.41.250] or 11.41.510 - 11.41.530, and the person has, within the
17 10 years preceding the commission of the offense for which the person has been
18 convicted, one or more prior convictions for a violation of AS 11.41 or for a violation
19 of a law in this or another jurisdiction having substantially similar elements to an
20 offense defined in AS 11.41; for the purposes of this paragraph, a person shall be
21 considered to have a prior conviction even if that conviction has been set aside under
22 (e) of this section or under the equivalent provision of the laws of another jurisdiction.

23 * Sec. 8. APPLICABILITY. AS 11.41.260 and 11.41.270, enacted by sec. 1 of this Act,
24 apply to acts committed on or after the effective date of this Act. However, to the extent a
25 previous conviction is an element of the offense under AS 11.41.260, that previous conviction
26 may have occurred before, on, or after the effective date of this Act.

27 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).