

HB

245

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 7, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/23/98

The FINANCE Committee considered:

HB 245

HOUSE BILL NO. 245

DOM. VIOL. ASSAULTS; PRISONER CONTACTS

"An Act relating to minimum sentences for assault in the fourth degree that is a crime involving domestic violence; providing that a prisoner may not contact the victim of the offense when provided access to a telephone or otherwise immediately after an arrest; and amending Rule 5(b), Alaska Rules of Criminal Procedure."

recommends it be replaced with the following committee substitute CS HB 245 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
2/1 fiscal note(s) DOA, DDC fiscal note(s) _____

2/1 zero fiscal note(s) DOA, DPS zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Gene Therriault</i> Therriault			X	
<i>Mark Hanley</i> Hanley			X	
<i>Edon Muldet</i> Muldet			X	
<i>Terry Martin</i> Martin				X
<i>Jim Kohring</i> Kohring				X
<i>Carl W. Davis</i> Davis				X
<i>Ben Grossendorf</i> Grossendorf				X
<i>Gene Davis</i> Davis			X	
<i>Steve Kelly</i> Kelly			X	
<i>Carl E. Mose</i> Mose			X	

CHAIR'S SIGNATURE *Gene Therriault* *Mark Hanley*

FISCAL NOTE

No. 3
 Bill Version: HB 245
 (H) Publish Date: 4/25/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to minimum sentences for assault in the fourth degree that is a crime involving domestic violence..."
 Sponsor: Representative Dyson
 Requestor: (H) JUD

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	***	***	***	***	***	***
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES	***	***	***	***	***	***
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CHANGE IN REVENUES ()	***	***	***	***	***	***
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FUND SOURCE: (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY 97) cost: \$ -0-

POSITIONS:

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	***	***	***	***	***	***
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Brink, Director Phone: (907) 264-4414
 Division: Public Defender Agency Date: _____
 Approved by Commissioner: Mark Boyer *Mark Boyer* Date: 4/23/97
 Agency: Department of Administration

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 245

This bill creates mandatory minimum jail sentences for a person convicted of misdemeanor assault when it is "a crime involving domestic violence" and the person has a previous conviction for any crime against a person (30 days if one prior; 60 days if 2 or more).

Mandatory minimum sentences remove the judges' ability to fashion an appropriate punishment given the seriousness of the harm, the rehabilitation potential of the defendant, the deterrent value and reaffirmation of societal norms. Such mandatory minimums create anomalies in the overall criminal sentencing scheme. Under this bill a person may be required to serve more jail time than if they had committed a serious felony crime.

Such sentences discourage people from admitting their conduct due to the harsh and somewhat arbitrary consequences. Fewer people will admit their guilt, and more cases will proceed to (costly) jury trials. Last year, according to Department of Law figures, the state prosecuted 1279 domestic assaults. The Municipality of Anchorage alone prosecuted an additional 1500. The estimates are that a good 30% - 50% of those cases involve repeat offenders, such that an even greater percentage of those would have a prior of any crime against a person. If even a small percentage of those cases which routinely settle go to trial, the financial burden placed upon the Public Defender is enormous. Without the ability to predict those trial numbers, quantification is impossible although impact is certain. This will be in our FY 98 supplemental request.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 245 (JUD)

Revision Date: _____
Title: "An Act relating to minimum sentences for assault in the fourth degree, a crime involving domestic violence..."
Sponsor: Representative Dyson
Requestor: (H) FIN

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
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CHANGE IN REVENUES ()	**	**	**	**	**	**
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Essay for MIB
Date: 2/19/98

jd

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 245 (JUD)

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill creates a new B misdemeanor crime if a prisoner communicates with the alleged victim of a crime that was the basis of the prisoner's arrest.

This bill creates mandatory minimum jail sentences for a person convicted of misdemeanor assault when it is "a crime involving domestic violence" and the person has a previous conviction for any crime against a person (30 days if one prior; 60 days if 2 or more).

Mandatory minimum sentences remove the judges' ability to fashion an appropriate punishment given the seriousness of the harm, the rehabilitation potential of the defendant, the deterrent value and reaffirmation of societal norms. Such mandatory minimums create anomalies in the overall criminal sentencing scheme. Under this bill a person may be required to serve more jail time than if they had committed a serious felony crime.

Such sentences discourage people from admitting their conduct due to the harsh and somewhat arbitrary consequences. Fewer people will admit their guilt, and more cases will proceed to (costly) jury trials. Last year, according to Department of Law figures, the state prosecuted 1279 domestic assaults. The Municipality of Anchorage alone prosecuted an additional 1500. The estimates are that a good 30% - 50% of those cases involve repeat offenders, such that an even greater percentage of those would have a prior of any crime against a person. If even a small percentage of those cases which routinely settle go to trial, the financial burden placed upon the Public Defender is enormous. Additionally, it is unknown how many new cases will be generated under the prohibition against contact. Without the ability to predict those numbers, quantification is impossible although impact is certain.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: CSHB 245 (Jud)

Revision Date: February 19 1998 Dept. Affected: Public Safety
 Title: Domestic Violence Assaults; Prisoner contacts BRU: DPS Statewide Support
 Sponsor: Representative Berkowitz Component: CDVSA
 Requestor: House Finance COMPONENT SERIAL NO. 0521

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 98) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Jayne Andreen Phone: _____
 Division: Council on Domestic Violence and Sexual Assault Date: February 19, 1998
 Approved by Commissioner: *Ronald L. Otte* Date: February 19, 1998
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

No. 4
 Bill Version: HB 245
 (H) Publish Date: 4/25/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act relating to minimum sentences for assault
in the fourth degree that is a crime involving domestic violence..." BRU: All
 Sponsor: Representative Dyson Component: All
 Requester: House State Affairs Committee COMPONENT SERIAL NO. #0694

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Section 3 of this legislation provides for new mandatory minimum sentences for persons convicted of assault in the fourth degree involving domestic violence who have previously been convicted of a crime against a person under AS 11.41.

The Department of Corrections is providing an indeterminate fiscal note since we are unable to provide an accurate estimate from existing data. Data provided from the Department of Law indicates there were 1279 convictions for assault in the fourth degree that involved domestic violence in 1996. This figure does not include municipal cases. The Municipality of Anchorage provided a figure of 1500 cases for 1996 with approximately thirty percent of those having previous convictions of crimes against a person.

To illustrate the impact of incarceration for only 1 day for the 30% with previous convictions:
 834 inmates X 105.25 average daily cost = \$87,778.50

The Department of Corrections believes that Judges are taking into account previous convictions for sentencing. However, it is not clear if they are equal to what is proposed in HB 245. If there is a significant impact resulting from passage of this legislation the Department of Corrections will make a corresponding request for an increase in the next fiscal years budget.

Prepared by: Bruce Richards Phone: 465-3307
 Division: Commissioner's Office Margaret M. Pugh Date: 4/23/97
 Approved by: Commissioner Margaret M. Pugh Date: 4/23/97
 Agency: Department of Corrections

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: relating to minimum sentences for assault BRU: Criminal Division
in the fourth degree that is a crime involving domestic violence . . . Component: Criminal Division
 Sponsor: Representative Dyson
 Requester: House State Affairs Committee COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 245 imposes minimum sentences for assault in the fourth degree that are crimes involving domestic violence if the defendant has a previous conviction(s). The minimum sentences may not be reduced or suspended. HB 245 further prohibits a prisoner from communicating with the alleged victim of the crime that was the basis of the arrest.

The mandatory minimum sentences required by this bill do not appear to be a significant departure from the average sentences that are being imposed under current procedures for crimes involving domestic violence. The bill would serve to equalize these sentencing practices across the state. Because of this, the Department of Law does not anticipate an increase in the number of cases that would go to trial if this bill passes, and so does not anticipate any fiscal impact. If the caseload does increase, contrary to our expectations, we would return to the legislature next year for relief.

Prepared by: Joan M. Kasson
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 4/22/97
 Date: 4/22/97

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1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: Domestic Violence Assaults; Prisoner Contacts DPS Statewide Support
 Component: Council on Domestic Violence and Sexual Assault
 Sponsor: Representative Berkowitz *DILLSON*
 Requestor: H. State Affairs *V* COMPONENT SERIAL NO. 0521

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Jayne Andreen, Executive Director Phone: 465-4356
 Division: Council on Domestic Violence and Sexual Assault Date: 4/22/97
 Approved by Commissioner: *Ronald L. Otto* Date: _____
 Agency: Ronald L. Otto, Dept. of Public Safety

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 245 (JUD)

Revision Date: (Note if correction)
 Title: "An Act relating to minimum sentences for assault in the fourth degree, a crime involving domestic violence...."
 Sponsor: Representative Dyson
 Requestor: (H) FIN

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ none

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill does not fiscally impact the Office of Public Advocacy.

Prepared by: Brant McGee, Director
 Division: Office of Public Advocacy

Phone: (907) 269-3500
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

John E. Essary for MB
 Date: 2/19/98

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Adopted
2/23/98
Amended pg 2

0-LS0450\R
Luckhaupt
2/21/98

CS FOR HOUSE BILL NO. 245(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the minimum sentences for assault in the fourth degree that
2 is a crime involving domestic violence; relating to the definition of 'crime
3 involving domestic violence' in AS 11; relating to providing that a prisoner may
4 not contact the victim of a crime involving domestic violence; and amending Rule
5 5(b), Alaska Rules of Criminal Procedure."

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

7 * **Section 1.** AS 11.56 is amended by adding a new section to read:

8 **Sec. 11.56.750. Unlawful contact with crime victim.** (a) A person commits
9 the crime of unlawful contact with crime victim if

10 (1) the person is arrested for a crime involving domestic violence; and

11 (2) before the person's initial appearance before a judge or magistrate

12 or before dismissal of the charge for which the person was arrested, whichever occurs

13 first, the person initiates communication or attempts to initiate communication with the

1 alleged victim of the crime that was the basis for the person's arrest.

2 (b) Unlawful contact with crime victim is a class B misdemeanor.

3 * Sec. 2. AS 11.81.900(b) is amended by adding a new paragraph to read:

4 (60) "crime involving domestic violence" has the meaning given in
5 AS 18.66.990.

6 * Sec. 3. AS 12.25.150(b) is amended to read:

7 (b) Immediately after an arrest, a prisoner shall have the right to telephone or
8 otherwise communicate with the prisoner's attorney and any relative or friend, and any
9 attorney at law entitled to practice in the courts of Alaska shall, at the request of the
10 prisoner or any relative or friend [FRIENDS] of the prisoner, have the right to
11 immediately visit the person arrested. This subsection does not provide a prisoner
12 with the right to initiate communication or attempt to initiate communication
13 under circumstances proscribed under AS 11.56.750.

14 * Sec. 4. AS 12.55.135(c) is amended to read:

15 (c) A defendant convicted of assault in the fourth degree that is a crime
16 involving domestic violence committed in violation of the provisions of an order
17 issued or filed under ~~AS 12.30.025, 12.30.027, or~~ AS 18.66.100 - 18.66.180 and not
18 subject to sentencing under (g) of this section [OR ISSUED UNDER FORMER
19 AS 25.35.010 OR 25.35.020] shall be sentenced to a minimum term of imprisonment
20 of 20 days.

21 * Sec. 5. AS 12.55.135 is amended by adding new subsections to read:

22 (g) A defendant convicted of assault in the fourth degree that is a crime
23 involving domestic violence shall be sentenced to a minimum term of imprisonment
24 of

25 (1) 30 days if the defendant has been previously convicted of a crime
26 against a person or a crime involving domestic violence;

27 (2) 60 days if the defendant has been previously convicted two or more
28 times of a crime against a person or a crime involving domestic violence, or a
29 combination of those crimes.

30 (h) If a defendant is sentenced under (g) of this section,

31 (1) execution of sentence may not be suspended and probation or parole

1 may not be granted until the minimum term of imprisonment has been served;

2 (2) imposition of sentence may not be suspended;

3 (3) the minimum term of imprisonment may not otherwise be reduced.

4 (i) In this section,

5 (1) "crime against a person" means a crime under AS 11.41, or a crime
6 in this or another jurisdiction having elements similar to those of a crime under
7 AS 11.41;

8 (2) "crime involving domestic violence" has the meaning given in
9 AS 18.66.990.

10 * Sec. 6. AS 12.55.145(a) is amended to read:

11 (a) For purposes of considering prior convictions in imposing sentence under

12 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

13 (A) a prior conviction may not be considered if a period of 10
14 or more years has elapsed between the date of the defendant's unconditional
15 discharge on the immediately preceding offense and commission of the present
16 offense unless the prior conviction was for an unclassified or class A felony;

17 (B) a conviction in this or another jurisdiction of an offense
18 having elements similar to those of a felony defined as such under Alaska law
19 at the time the offense was committed is considered a prior felony conviction;

20 (C) two or more convictions arising out of a single, continuous
21 criminal episode during which there was no substantial change in the nature of
22 the criminal objective are considered a single conviction unless the defendant
23 was sentenced to consecutive sentences for the crimes; offenses committed
24 while attempting to escape or avoid detection or apprehension after the
25 commission of another offense are not part of the same criminal episode or
26 objective;

27 (2) AS 12.55.125(l),

28 (A) a conviction in this or another jurisdiction of an offense
29 having elements similar to those of a most serious felony is considered a prior
30 most serious felony conviction;

31 (B) commission of and conviction for offenses relied on as prior

1 most serious felony offenses must occur in the following order: conviction for
2 the first offense must occur before commission of the second offense, and
3 conviction for the second offense must occur before commission of the offense
4 for which the defendant is being sentenced;

5 (3) AS 12.55.135(g).

6 (A) a prior conviction may not be considered if a period of
7 five or more years has elapsed between the date of the defendant's
8 unconditional discharge on the immediately preceding offense and
9 commission of the present offense unless the prior conviction was for an
10 unclassified or class A felony;

11 (B) a conviction in this or another jurisdiction of an offense
12 having elements similar to those of a crime against a person or a crime
13 involving domestic violence is considered a prior conviction;

14 (C) two or more convictions arising out of a single,
15 continuous criminal episode during which there was no substantial change
16 in the nature of the criminal objective are considered a single conviction
17 unless the defendant was sentenced to consecutive sentences for the crimes;
18 offenses committed while attempting to escape or avoid detection or
19 apprehension after the commission of another offense are not part of the
20 same criminal episode or objective.

21 * Sec. 7. AS 12.55.145(c) is amended to read:

22 (c) The defendant shall file with the court and serve on the prosecuting
23 attorney notice of denial, consisting of a concise statement of the grounds relied upon
24 and that may be supported by affidavit or other documentary evidence, no later than
25 10 days before the date set for the imposition of sentence if the defendant

26 (1) denies

27 (A) the authenticity of a prior judgment of conviction;

28 (B) that the defendant is the person named in the judgment;

29 (C) that the elements of a prior offense committed in this or
30 another jurisdiction are similar to those of a

31 (i) felony defined as such under Alaska law;

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(ii) most serious felony, defined as such under Alaska

law;

(iii) crime against a person or a crime involving domestic violence;

(D) that a prior conviction occurred within the period specified in (a)(1)(A) **or (3)(A)** of this section; or

(E) that a previous conviction occurred in the order required under (a)(2)(B) of this section; or

(2) alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(1)(C) **or (3)(C)** of this section.

* **Sec. 8.** AS 12.55.145(d) is amended to read:

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1)(A) **or (3)(A)** of this section, that a conviction should not be considered a prior felony conviction under (a)(1)(B) of this section, [OR] a prior most serious felony conviction under (a)(2)(A) of this section, **or a prior crime against a person or a crime involving domestic violence conviction under (a)(3)(B) of this section,** or that a previous conviction did not occur in the order required under (a)(2)(B) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(1)(C) **or (3)(C)** of this section is on the defendant by clear and convincing evidence.

* **Sec. 9.** AS 12.55.145 is amended by adding a new subsection to read:

(g) In this section,

(1) "crime against a person" has the meaning given in AS 12.55.135(i);

(2) "crime involving domestic violence" has the meaning given in

AS 18.66.990.

* **Sec. 10.** Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Rights of Prisoner to Communicate With Attorney or Other Person.**

1 Immediately after arrest, the prisoner shall have the right forthwith to telephone or
2 otherwise to communicate with both an attorney and any relative or friend. Any
3 attorney at law entitled to practice in the courts of Alaska, at the request of either the
4 prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit
5 the prisoner in private. This subsection does not provide a prisoner with the right
6 to initiate communication or attempt to initiate communication under
7 circumstances proscribed under AS 11.56.750.

8 * Sec. 11. AS 11.56.745(b) is repealed.

9 * Sec. 12. AS 12.25.150(b), as amended by sec. 3 of this Act, amends Rule 5(b), Alaska
10 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
11 immediately after arrest.

12 * Sec. 13. Sections 1, 3, and 10 of this Act take effect only if secs. 10 and 12 of this Act
13 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
14 of the State of Alaska.

15 * Sec. 14. References to previous convictions in this Act apply to all convictions occurring
16 before, on, or after the effective date of this Act.

Adopted

AMENDMENT 2

OFFERED IN THE HOUSE

TO: CSHB 245(FIN)

Version LS0450R
2/21/98

Page 1, Line 4

After "contact the victim of a"

Insert "crime against a person or a"

Page 1, Line 10

After "arrested for a"

Insert "crime against a person or a"

Adopted
2/23/98
A

AMENDMENT 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSHB 245 ()

Version LS0450\R

Page 1, line 2:

Following "AS 11;"

Delete "relating to providing that a prisoner may not contact the victim of crime involving domestic violence;"

Insert "relating to unlawful contact with a victim or witness;"

Page 1, following line 6:

Insert a new bill section to read:

* **Section 1.** AS 11.56 is amended by adding the following:

Sec. 11.56.750. Unlawful contact in the first degree. (a) A person commits the crime of unlawful contact in the first degree if the person

(1) has been ordered not to contact a victim or witness of the offense as

(A) part of a sentence imposed under AS 12.55.015; or

(B) as a condition of

(i) release under AS 12.30;

(ii) probation under AS 12.55.101; or

(iii) parole under AS 33.16.150; and

(2) either directly or indirectly, knowingly contacts or attempts to contact

the victim or witness in violation of the order.

(b) Unlawful contact in the first degree is a class A misdemeanor.

Renumber the following bill sections accordingly.

Page 1, lines 8 and 9:

Delete all material and insert the following:

“Sec. 11.56.755. Unlawful contact in the second degree. (a) A person commits the crime of unlawful contact in the second degree if “

Page 2, following line 2:

Insert the following

“ Sec. 2. AS 11.56 is amended by adding a new section to read:

Sec. 11.56.756. Definitions. In AS 11.56.750 and 11.56.755,

(1) “victim” has the meaning given in AS 12.55.185; and

(2) “witness” has the meaning given in AS 12.61.900.

Renumber the following bill sections accordingly.

Page 2, following line 13:

Insert a new bill section to read:

*** Sec. 4.** AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035;

(B) day fine when authorized by law and as provided in

AS 12.55.036, if the court does not impose a term of periodic or continuous imprisonment or place the defendant on probation;

- (2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;
- (3) impose a definite term of periodic imprisonment;
- (4) impose a definite term of continuous imprisonment;
- (5) order the defendant to make restitution under AS 12.55.045;
- (6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;
- (7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;
- (8) suspend imposition of sentence under AS 12.55.085;
- (9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;
- (10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;
- (11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or

**indirectly, with a victim or witness of the offense until the defendant is
unconditionally discharged.**

Renumber the following bill sections accordingly.

MISDEMEANOR SENTENCES DOMESTIC VIOLENCE -- 1998

RE: HB 245

DAVIES

	A	B	C	D	E	F	G	H	I	J	K	
138			Percentage									
139			of cases									
140	Assaults Only	Total Cases	0 days	1-5 d	6-10 d	11-29 d	30-60 d	61-90 d	91-120 d	121d +	SIS	
141	ANCHORAGE	164	38	23	9	10	15	29	3	2	9	12
142	BARROW	30	9	30	30	10	10	17	0	0	3	7
143	BETHEL	194	13	22	8	11	16	21	7	6	10	3
144	DILLINGHAM	63	18	29	17	5	13	24	2	2	10	5
145	FAIRBANKS	212	55	26	40	8	11	12	0	1	1	10
146	JUNEAU	50	7	14	14	18	18	18	10	2	6	4
147	KENAI	82	30	37	9	11	4	17	10	4	10	9
148	KETCHIKAN	109	21	19	31	14	15	13	2	2	4	5
149	KODIAK	44	17	39	14	14	7	18	5	5	0	7
150	KOTZEBUE	76	2.1	28	4	13	5	20	4	1	5	11
151	NOME	93	4.6	49	6	8	15	17	1	1	2	3
152	PALMER	140	6.4	60	6	5	6	14	6	1	3	36
153	SITKA	22	9	40	20	15	25	10	0	0	10	9
154	TOTAL	1279	%	31	17	10	12	18	4	2	6	10

378 ~~1279~~ 19.39

OR: IF: $200 \times 20 \text{ day} \times 100 \text{ \$/d} = 400,000!$

[C] 5% → $20 \times 20 \times 100 = 40,000$
 [D] 10% → $19 \times 15 \times 100 = 28,500$
 [E] 15% → $19 \times 10 \times 100 = 19,000$
 } \$87,500 / year

0-LS0450\Q
Luckhaupt
2/19/98

CS FOR HOUSE BILL NO. 245(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the minimum sentences for assault in the fourth degree that
2 is a crime involving domestic violence; relating to providing that a prisoner may
3 not contact the victim of a crime involving domestic violence when provided
4 access to a telephone or otherwise immediately after an arrest; and amending
5 Rule 5(b), Alaska Rules of Criminal Procedure."

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

7 * **Section I.** AS 11.56 is amended by adding a new section to read:

8 **Sec. 11.56.750. Misuse of telephone privilege by a prisoner.** (a) A person
9 commits the crime of misuse of telephone privilege by a prisoner if the person is a
10 prisoner arrested for a crime involving domestic violence and, in exercising a right
11 granted under AS 12.25.150(b), the person communicates or attempts to communicate
12 with the alleged victim of the crime that was the basis of the person's arrest.

13 (b) Misuse of telephone privilege by a prisoner is a class B misdemeanor.

1 * Sec. 2. AS 12.25.150(b) is amended to read:

2 (b) Immediately after an arrest, a prisoner shall have the right to telephone or
3 otherwise communicate with the prisoner's attorney and any relative or friend, except
4 that a prisoner arrested for a crime involving domestic violence may not
5 communicate with the alleged victim of the crime that was the basis of the
6 prisoner's arrest. Any [AND ANY] attorney at law entitled to practice in the courts
7 of Alaska shall, at the request of the prisoner or any relative or friend [FRIENDS] of
8 the prisoner, have the right to immediately visit the person arrested. In this
9 subsection, "crime involving domestic violence" has the meaning given in
10 AS 18.66.990.

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

12 (c) A defendant convicted of assault in the fourth degree that is a crime
13 involving domestic violence committed in violation of the provisions of an order
14 issued or filed under AS 12.30.025, 12.30.027, or AS 18.66.100 - 18.66.180 and not
15 subject to sentencing under (g) of this section [OR ISSUED UNDER FORMER
16 AS 25.35.010 OR 25.35.020] shall be sentenced to a minimum term of imprisonment
17 of 20 days.

18 * Sec. 4. AS 12.55.135 is amended by adding new subsections to read:

19 (g) A defendant convicted of assault in the fourth degree that is a crime
20 involving domestic violence shall be sentenced to a minimum term of imprisonment
21 of

22 (1) 30 days if the defendant has been previously convicted of a crime
23 against a person or a crime involving domestic violence;

24 (2) 60 days if the defendant has been previously convicted two or more
25 times of a crime against a person or a crime involving domestic violence, or a
26 combination of those crimes.

27 (h) If a defendant is sentenced under (g) of this section,

28 (1) execution of sentence may not be suspended and probation or parole
29 may not be granted until the minimum term of imprisonment has been served;

30 (2) imposition of sentence may not be suspended;

31 (3) the minimum term of imprisonment may not otherwise be reduced.

1 (i) In this section,

2 (1) "crime against a person" means a crime under AS 11.41, or a crime
3 in this or another jurisdiction having elements similar to those of a crime under
4 AS 11.41;

5 (2) "crime involving domestic violence" has the meaning given in
6 AS 18.66.990.

7 * Sec. 5. AS 12.55.145(a) is amended to read:

8 (a) For purposes of considering prior convictions in imposing sentence under

9 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

10 (A) a prior conviction may not be considered if a period of 10
11 or more years has elapsed between the date of the defendant's unconditional
12 discharge on the immediately preceding offense and commission of the present
13 offense unless the prior conviction was for an unclassified or class A felony;

14 (B) a conviction in this or another jurisdiction of an offense
15 having elements similar to those of a felony defined as such under Alaska law
16 at the time the offense was committed is considered a prior felony conviction;

17 (C) two or more convictions arising out of a single, continuous
18 criminal episode during which there was no substantial change in the nature of
19 the criminal objective are considered a single conviction unless the defendant
20 was sentenced to consecutive sentences for the crimes; offenses committed
21 while attempting to escape or avoid detection or apprehension after the
22 commission of another offense are not part of the same criminal episode or
23 objective;

24 (2) AS 12.55.125(l),

25 (A) a conviction in this or another jurisdiction of an offense
26 having elements similar to those of a most serious felony is considered a prior
27 most serious felony conviction;

28 (B) commission of and conviction for offenses relied on as prior
29 most serious felony offenses must occur in the following order: conviction for
30 the first offense must occur before commission of the second offense, and
31 conviction for the second offense must occur before commission of the offense

1 for which the defendant is being sentenced;

2 (3) AS 12.55.135(g).

3 (A) a prior conviction may not be considered if a period of
4 five or more years has elapsed between the date of the defendant's
5 unconditional discharge on the immediately preceding offense and
6 commission of the present offense unless the prior conviction was for an
7 unclassified or class A felony;

8 (B) a conviction in this or another jurisdiction of an offense
9 having elements similar to those of a crime against a person or a crime
10 involving domestic violence is considered a prior conviction;

11 (C) two or more convictions arising out of a single,
12 continuous criminal episode during which there was no substantial change
13 in the nature of the criminal objective are considered a single conviction
14 unless the defendant was sentenced to consecutive sentences for the crimes;
15 offenses committed while attempting to escape or avoid detection or
16 apprehension after the commission of another offense are not part of the
17 same criminal episode or objective.

18 * Sec. 6. AS 12.55.145(c) is amended to read:

19 (c) The defendant shall file with the court and serve on the prosecuting
20 attorney notice of denial, consisting of a concise statement of the grounds relied upon
21 and that may be supported by affidavit or other documentary evidence, no later than
22 10 days before the date set for the imposition of sentence if the defendant

23 (1) denies

24 (A) the authenticity of a prior judgment of conviction;

25 (B) that the defendant is the person named in the judgment;

26 (C) that the elements of a prior offense committed in this or
27 another jurisdiction are similar to those of a

28 (i) felony defined as such under Alaska law;

29 (ii) most serious felony, defined as such under Alaska

30 law;

31 (iii) crime against a person or a crime involving

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domestic violence:

(D) that a prior conviction occurred within the period specified in (a)(1)(A) **or (3)(A)** of this section; or

(E) that a previous conviction occurred in the order required under (a)(2)(B) of this section; or

(2) alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(1)(C) **or (3)(C)** of this section.

* Sec. 7. AS 12.55.145(d) is amended to read:

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1)(A) **or (3)(A)** of this section, that a conviction should not be considered a prior felony conviction under (a)(1)(B) of this section, [OR] a prior most serious felony conviction under (a)(2)(A) of this section, **or a prior crime against a person or a crime involving domestic violence conviction under (a)(3)(B) of this section,** or that a previous conviction did not occur in the order required under (a)(2)(B) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(1)(C) **or (3)(C)** of this section is on the defendant by clear and convincing evidence.

* Sec. 8. AS 12.55.145 is amended by adding a new subsection to read:

(g) In this section,

(1) "crime against a person" has the meaning given in AS 12.55.135(i);

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990.

* Sec. 9. Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Rights of Prisoner to Communicate With Attorney or Other Person.**

Immediately after arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both an attorney and any relative or friend, **except that a prisoner arrested for a crime involving domestic violence may not communicate**

1 with the alleged victim of the crime that was the basis of the prisoner's arrest.
2 Any attorney at law entitled to practice in the courts of Alaska, at the request of either
3 the prisoner or any relative or friend of the prisoner, shall have the right forthwith to
4 visit the prisoner in private.

5 * **Sec. 10.** AS 12.55.150(b), as amended by sec. 2 of this Act, amends Rule 5(b), Alaska
6 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
7 immediately after arrest.

8 * **Sec. 11.** Sections 1, 2, and 9 of this Act take effect only if secs. 9 and 10 of this Act
9 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
10 of the State of Alaska.

11 * **Sec. 12.** References to previous convictions in this Act apply to all convictions occurring
12 before, on, or after the effective date of this Act.

CS FOR HOUSE BILL NO. 245()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the minimum sentences for assault in the fourth degree that
2 is a crime involving domestic violence; providing that a prisoner may not contact
3 the victim of the offense when provided access to a telephone or otherwise
4 immediately after an arrest; and amending Rule 5(b), Alaska Rules of Criminal
5 Procedure."

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

7 * **Section 1.** AS 11.56 is amended by adding a new section to read:

8 **Sec. 11.56.750. Misuse of telephone privilege by a prisoner.** (a) A person
9 commits the crime of misuse of telephone privilege by a prisoner if the person is a
10 prisoner and, in exercising a right granted under AS 12.25.150(b), the person
11 communicates or attempts to communicate with the alleged victim of the crime that
12 was the basis of the person's arrest.

13 (b) Misuse of telephone privilege by a prisoner is a class B misdemeanor.

1 * Sec. 2. AS 12.25.150(b) is amended to read:

2 (b) Immediately after an arrest, a prisoner shall have the right to telephone or
3 otherwise communicate with the prisoner's attorney and any relative or friend, except
4 that the prisoner may not communicate with the alleged victim of the crime that
5 was the basis of the prisoner's arrest. Any [AND ANY] attorney at law entitled to
6 practice in the courts of Alaska shall, at the request of the prisoner or any relative or
7 friend [FRIENDS] of the prisoner, have the right to immediately visit the person
8 arrested.

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

10 (c) A defendant convicted of assault in the fourth degree that is a crime
11 involving domestic violence committed in violation of the provisions of an order
12 issued or filed under AS 12.30.025, 12.30.027, or AS 18.66.100 - 18.66.180 and not
13 subject to sentencing under (g) of this section [OR ISSUED UNDER FORMER
14 AS 25.35.010 OR 25.35.020] shall be sentenced to a minimum term of imprisonment
15 of 20 days.

16 * Sec. 4. AS 12.55.135 is amended by adding new subsections to read:

17 (g) A defendant convicted of assault in the fourth degree that is a crime
18 involving domestic violence shall be sentenced to a minimum term of imprisonment
19 of

20 (1) 30 days if the defendant has been previously convicted of a crime
21 against a person or a crime involving domestic violence;

22 (2) 60 days if the defendant has been previously convicted two or more
23 times of a crime against a person or a crime involving domestic violence, or a
24 combination of those crimes.

25 (h) If a defendant is sentenced under (g) of this section,

26 (1) execution of sentence may not be suspended and probation or parole
27 may not be granted until the minimum term of imprisonment has been served;

28 (2) imposition of sentence may not be suspended;

29 (3) the minimum term of imprisonment may not otherwise be reduced.

30 (i) In this section,

31 (1) "crime against a person" means a crime under AS 11.41, or a crime

1 in this or another jurisdiction having elements similar to those of a crime under
2 AS 11.41;

3 (2) "crime involving domestic violence" has the meaning given in
4 AS 18.66.990.

5 * Sec. 5. AS 12.55.145(a) is amended to read:

6 (a) For purposes of considering prior convictions in imposing sentence under

7 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

8 (A) a prior conviction may not be considered if a period of 10
9 or more years has elapsed between the date of the defendant's unconditional
10 discharge on the immediately preceding offense and commission of the present
11 offense unless the prior conviction was for an unclassified or class A felony;

12 (B) a conviction in this or another jurisdiction of an offense
13 having elements similar to those of a felony defined as such under Alaska law
14 at the time the offense was committed is considered a prior felony conviction;

15 (C) two or more convictions arising out of a single, continuous
16 criminal episode during which there was no substantial change in the nature of
17 the criminal objective are considered a single conviction unless the defendant
18 was sentenced to consecutive sentences for the crimes; offenses committed
19 while attempting to escape or avoid detection or apprehension after the
20 commission of another offense are not part of the same criminal episode or
21 objective;

22 (2) AS 12.55.125(l),

23 (A) a conviction in this or another jurisdiction of an offense
24 having elements similar to those of a most serious felony is considered a prior
25 most serious felony conviction;

26 (B) commission of and conviction for offenses relied on as prior
27 most serious felony offenses must occur in the following order: conviction for
28 the first offense must occur before commission of the second offense, and
29 conviction for the second offense must occur before commission of the offense
30 for which the defendant is being sentenced;

31 (3) AS 12.55.135(g).

1 (A) a prior conviction may not be considered if a period of
2 five or more years has elapsed between the date of the defendant's
3 unconditional discharge on the immediately preceding offense and
4 commission of the present offense unless the prior conviction was for an
5 unclassified or class A felony;

6 (B) a conviction in this or another jurisdiction of an offense
7 having elements similar to those of a crime against a person or a crime
8 involving domestic violence is considered a prior conviction;

9 (C) two or more convictions arising out of a single,
10 continuous criminal episode during which there was no substantial change
11 in the nature of the criminal objective are considered a single conviction
12 unless the defendant was sentenced to consecutive sentences for the crimes;
13 offenses committed while attempting to escape or avoid detection or
14 apprehension after the commission of another offense are not part of the
15 same criminal episode or objective.

16 * Sec. 6. AS 12.55.145(c) is amended to read:

17 (c) The defendant shall file with the court and serve on the prosecuting
18 attorney notice of denial, consisting of a concise statement of the grounds relied upon
19 and that may be supported by affidavit or other documentary evidence, no later than
20 10 days before the date set for the imposition of sentence if the defendant

21 (1) denies

22 (A) the authenticity of a prior judgment of conviction;

23 (B) that the defendant is the person named in the judgment;

24 (C) that the elements of a prior offense committed in this or
25 another jurisdiction are similar to those of a

26 (i) felony defined as such under Alaska law;

27 (ii) most serious felony, defined as such under Alaska
28 law;

29 (iii) crime against a person or a crime involving
30 domestic violence;

31 (D) that a prior conviction occurred within the period specified

1 in (a)(1)(A) or (3)(A) of this section; or

2 (E) that a previous conviction occurred in the order required
3 under (a)(2)(B) of this section: or

4 (2) alleges that two or more purportedly separate prior convictions
5 should be considered a single conviction under (a)(1)(C) or (3)(C) of this section.

6 * Sec. 7. AS 12.55.145(d) is amended to read:

7 (d) Matters alleged in a notice of denial shall be heard by the court sitting
8 without a jury. If the defendant introduces substantial evidence that the defendant is
9 not the person named in a prior judgment of conviction, that the judgment is not
10 authentic, that the conviction did not occur within the period specified in (a)(1)(A) or
11 (3)(A) of this section, that a conviction should not be considered a prior felony
12 conviction under (a)(1)(B) of this section, [OR] a prior most serious felony conviction
13 under (a)(2)(A) of this section, or a prior crime against a person or a crime
14 involving domestic violence conviction under (a)(3)(B) of this section, or that a
15 previous conviction did not occur in the order required under (a)(2)(B) of this section,
16 then the burden is on the state to prove the contrary beyond a reasonable doubt. The
17 burden of proof that two or more convictions should be considered a single conviction
18 under (a)(1)(C) or (3)(C) of this section is on the defendant by clear and convincing
19 evidence.

20 * Sec. 8. AS 12.55.145 is amended by adding a new subsection to read:

21 (g) In this section,

22 (1) "crime against a person" has the meaning given in AS 12.55.135(i);

23 (2) "crime involving domestic violence" has the meaning given in
24 AS 18.66.990.

25 * Sec. 9. Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

26 (b) **Rights of Prisoner to Communicate With Attorney or Other Person.**

27 Immediately after arrest, the prisoner shall have the right forthwith to telephone or
28 otherwise to communicate with both an attorney and any relative or friend, except that
29 the prisoner may not communicate with the alleged victim of the crime that was
30 the basis of the prisoner's arrest. Any attorney at law entitled to practice in the
31 courts of Alaska, at the request of either the prisoner or any relative or friend of the

1 prisoner, shall have the right forthwith to visit the prisoner in private.

2 * **Sec. 10.** AS 12.55.150(b), as amended by sec. 2 of this Act, amends Rule 5(b), Alaska
3 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
4 immediately after arrest.

5 * **Sec. 11.** Sections 1, 2, and 9 of this Act take effect only if secs. 9 and 10 of this Act
6 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
7 of the State of Alaska.

8 * **Sec. 12.** References to previous convictions in this Act apply to all convictions occurring
9 before, on, or after the effective date of this Act.

2/19/98

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSHB 245 ()

Version LS0450\P

Page 1, line 2:

Following "violence;"

Insert "relating to violation of a no contact order;"

Page 1, following line 6:

Insert a new bill section to read:

* **Section 1.** AS 11.56 is amended by adding the following:

Sec. 11.56.755. Violating a no contact order. (a) A person commits the crime of violating a no contact order if the person

(1) has been ordered not to contact a victim or witness of the offense as

(A) part of a sentence imposed under AS 12.55.01; or

(B) as a condition of

(i) release under AS 12.30.025 or 12.30.027;

(ii) probation under AS 12.55.101; or

(iii) parole under AS 33.16.150; and

(2) either directly or indirectly, knowingly contacts or attempts to contact the victim or witness in violation of the order.

(b) Violating a no contact order is a class A misdemeanor.

Renumber the following bill sections accordingly.

Page 2, following line 6:

Insert a new bill section to read:

* Sec. 4. AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035;

(B) day fine when authorized by law and as provided in

AS 12.55.036, if the court does not impose a term of periodic or continuous

imprisonment or place the defendant on probation;

(2) order the defendant to be placed on probation under conditions

specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of

community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged.

Renumber the following bill sections accordingly.

No contact orders

Judges currently have the authority to order a defendant not to contact the victim or witness of an offense as a condition of bail release and probation, but it is less clear that the court can order the defendant to have not contact with the victim or witness as part of the sentence. This amendment clarifies that the court has this power as part of the court's sentencing authority.

The effective enforcement of such an order under current law is problematic. The order can be enforced through criminal contempt under AS 09.50.010 and 020. This is not an effective remedy. The maximum penalty is a \$100 fine unless a right or remedy of a party to an action or proceeding was prejudiced by the contempt. If a right or remedy has been prejudiced, the maximum penalty is a fine of \$300 or six months' imprisonment or both. Many judges find that victims of and witnesses to crimes are not "parties to an action", so the maximum penalty will be \$100.

A statute making it a separate offense to violate such an order will be a much more effective deterrent to a person who has been ordered, for the safety of the victim or witness, to stay away from the person.



Alaska State Legislature

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Alaska State Capitol
Juneau, Alaska 99801-1182
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REPRESENTATIVE FRED DYSON

HB 245

Sponsor Statement

Minimum Sentences For Domestic Violence And Phone Call Restrictions For Prisoners

"An Act relating to minimum sentences for assault in the fourth degree that is a crime involving domestic violence; providing that a prisoner may not contact the victim of the offense when provided access to a telephone or otherwise immediately after an arrest; and amending Rule 5(b), Alaska Rules of Criminal Procedure."

HB 245 takes two important steps against Domestic Violence (DV).

First, it establishes graduated minimum sentences for domestic violence offenders. Just as the law recognizes the need to ratchet up penalties for drunk drivers, mandatory minimum sentences for repeat DV offenders delivers the message that Alaska does not tolerate the cycle of violence.

Second, HB 245 prevents defendants from using their "one phone call" to contact victims following arrest. Victims groups and police departments throughout Alaska recognize this as another important step in the fight for victims' rights.

Many organizations have expressed approval of this legislation and appreciate your assistance in giving police and prosecutors needed tools to arrest Domestic Violence.

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akRepublicans.org>

2/19/98

Chapter 11.41. OFFENSES AGAINST THE PERSON

Article 01. HOMICIDE

- Sec. 11.41.100. Murder in the first degree.
- Sec. 11.41.110. Murder in the second degree.
- Sec. 11.41.120. Manslaughter.
- Sec. 11.41.130. Criminally negligent homicide.

Crime Classification

Unclassified Felony
Unclassified Felony
Class A Felony
Class C Felony

Article 02. ASSAULT AND RECKLESS ENDANGERMENT

- Sec. 11.41.200. Assault in the first degree.
- Sec. 11.41.210. Assault in the second degree.
- Sec. 11.41.220. Assault in the third degree.
- Sec. 11.41.230. Assault in the fourth degree.
- Sec. 11.41.250. Reckless endangerment.
- Sec. 11.41.260. Stalking in the first degree.
- Sec. 11.41.270. Stalking in the second degree.

Class A Felony
Class B Felony
Class C Felony
Class A Misdemeanor
Class A Misdemeanor
Class C Felony.
Class A Misdemeanor

Article 03. KIDNAPPING AND CUSTODIAL INTERFERENCE

- Sec. 11.41.300. Kidnapping.
- Sec. 11.41.320. Custodial interference in the first degree.
- Sec. 11.41.330. Custodial interference in the second degree.

Unclassified Felony
Class C Felony
Class A Misdemeanor

Article 04. SEXUAL OFFENSES

- Sec. 11.41.410. Sexual assault in the first degree.
- Sec. 11.41.420. Sexual assault in the second degree.
- Sec. 11.41.425. Sexual assault in the third degree.
- Sec. 11.41.434. Sexual abuse of a minor in the first degree.
- Sec. 11.41.436. Sexual abuse of a minor in the second degree.
- Sec. 11.41.438. Sexual abuse of a minor in the third degree.
- Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.
- Sec. 11.41.450. Incest.
- Sec. 11.41.455. Unlawful exploitation of a minor.
- Sec. 11.41.460. Indecent exposure.

Unclassified Felony
Class B Felony
Class C Felony
Unclassified Felony
Class B Felony
Class C Felony
Class A Misdemeanor
Class C Felony
Class B Felony
Class B Misdemeanor

Article 05. ROBBERY, EXTORTION, AND COERCION

- Sec. 11.41.500. Robbery in the first degree.
- Sec. 11.41.510. Robbery in the second degree.
- Sec. 11.41.520. Extortion.
- Sec. 11.41.530. Coercion.

Class A Felony
Class B Felony
Class B Felony
Class C Felony

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 16, 1998

SUBJECT: Sectional Summary - CSHB 245() (Work Order No. 20-LS0450\P)

TO: Representative Fred Dyson
Attn: Lisa

FROM: Gerald P. Luckhaupt *JPL*
Legislative Counsel

You have asked for a sectional summary of the above-referenced bill. A sectional summary is not an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.56 by creating a new crime that provides that a prisoner may not use the right to make a telephone call granted under AS 12.25.150(b) to contact the victim of the prisoner's offense.

Section 2 of the bill limits an arrestee's right to use the telephone after arrest; provides that an arrestee may not call or otherwise contact the alleged victim.

Section 3 of the bill provides that this section only applies for sentencing purposes if AS 12.55.135(g) does not apply.

Section 4 of the bill establishes minimum sentences for persons engaging in domestic violence by violating AS 11.41.230, assault in the fourth degree, that is a crime involving domestic violence.

Section 5 of the bill amends AS 12.45.145(a) to provide when prior convictions may be considered for sentencing purposes under AS 12.55.135(g).

Sections 6 - 8 of the bill provide conforming changes to the change made in section 5 of the bill.

Section 9 of the bill amends Rule 5(b), Alaska Rules of Criminal Procedure, to provide a change that corresponds to the change made in sec. 1 of the bill.

Representative Fred Dyson
January 16, 1998
Page 2

Section 10 of the bill provides a notice section to announce that sec. 1 of the bill effects a court rule change.

Section 11 of the bill provides that secs. 1, 2, and 9 only take effect if those sections receive the two-thirds vote required under the Constitution for court rule charges.

Section 12 of the bill provides an applicability section.

GPL:jdr:glc
98-012.jdr

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 15, 1998

SUBJECT: Domestic Violence CSHB 245(Work Order No. 20-LS0450\P)

TO: Representative Fred Dyson
Attn: Lisa

FROM: Gerald P. Luckhaupt *GL*
Legislative Counsel

Enclosed is the CS you requested. The CS() addresses the two concerns I had with CSHB 245(JUD) as it passed out of the Judiciary Committee.

1. Amendment 2 adopted by the Judiciary Committee added bill sec. 2, of CSHB 245(JUD). This section is a new subsection to AS 12.25.150 that creates a new crime, punishable as a class B misdemeanor, that proscribes the conduct by a prisoner in contacting the alleged victim of the offense the prisoner has been arrested for when the prisoner is allowed access to a telephone under AS 12.25.150. The placement of this new offense in AS 12 is incorrect. This new offense should be placed in AS 11, where the legislature defines offenses, including offenses that are related to a person's conduct in jail or their conduct vis-a-vis their victim. e.g., in the domestic violence area. AS 12 sets forth the procedures to be utilized when someone is investigated for, charged with, or convicted of a crime and the legislature commonly has not previously located crimes in this title. Section 1 of the CS() places this new offense in AS 11.

2. The first amendment adopted by the Judiciary Committee amended AS 12.55.135(c). See bill sec. 3, CSHB 245(JUD). This amendment provided that a person who commits assault in the fourth degree in violation of the provisions of AS 12.30.025 or 12.30.027 is subject to the minimum sentence provided in that section. My concern is that this section would apply even if the person assaulted is not the domestic violence or stalking victim, or family members of the victim or the offender, but the facts of the assault collaterally violate the bail conditions (the offender was drunk, possessed a firearm, was at a certain place or within, etc.).^{1/} To maintain the nexus that is intended by this section, I have inserted the following language into bill section 3 following "degree": ", that is a crime involving domestic violence,"

^{1/} This concern is also applicable to the existing language of AS 12.55.135(c) dealing with domestic violence orders.

Representative Fred Dyson

January 16, 1998

Page 2

If you have any with questions, please contact me at your convenience.

GPL:glc

98-014.glc

Enclosure



February 19, 1998

1057 W. Fireweed Ln, Suite 230
Anchorage, Alaska 99503

Representative Fred Dyson
State Capitol
Room 428
Juneau, Alaska 99801-1182

Business 907/276-7279
24 Hour Crisis 907/276-7273
Toll Free 1-800-473-8399
Fax 907/276-9903
TTY 907/276-4908

Dear Representative Dyson:

This letter is in support of House Bill 245, graduated penalties for repeat 4th degree assault domestic violence offenses and prohibiting a prisoner from contacting the victim of the offense immediately after an arrest. We appreciate your sponsoring this legislation.

STAR focuses mainly on the victims of sexual assault and sexual abuse. At the same time, the problem of domestic violence is a prevalent factor that many of our victims suffer from in addition to sexual violence. It is known that the offenders of domestic violence often continue their abuse while incarcerated via phone calls and other means of contact to keep tabs on the victim. By prohibiting the offender from making these contacts, we can take another step toward alleviating the suffering that victims of domestic violence live with.

We support the passing of House Bill 245, which is scheduled to be heard in House Finance on Thursday, February 19th. Thank you for sponsoring this bill, and feel free to contact me for further letters of support.

Sincerely,

Trisha Gentle
Executive Director

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSHB 245 ()

Version LS0450\P

Page 1, line 2:

Following "violence;"

Insert "relating to violation of a no contact order;"

Page 1, following line 6:

Insert a new bill section to read:

* **Section 1.** AS 11.56 is amended by adding the following:

Sec. 11.56.755. Violating a no contact order. (a) A person commits the crime of violating a no contact order if the person

(1) has been ordered not to contact a victim or witness of the offense as

(A) part of a sentence imposed under AS 12.55.01; or

(B) as a condition of

(i) release under AS 12.30.025 or 12.30.027;

(ii) probation under AS 12.55.101; or

(iii) parole under AS 33.16.150; and

(2) either directly or indirectly, knowingly contacts or attempts to contact

the victim or witness in violation of the order.

(b) Violating a no contact order is a class A misdemeanor.

Renumber the following bill sections accordingly.

Page 2, following line 6:

Insert a new bill section to read:

* Sec. 4. AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035;

(B) day fine when authorized by law and as provided in

AS 12.55.036, if the court does not impose a term of periodic or continuous imprisonment or place the defendant on probation;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged.

Renumber the following bill sections accordingly.



House Finance Committee

DATE: February 19, 98

PLACE: Capital 519

SUBJECT OF MEETING:
HB 231
HB 245

①

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Jim Stratton	State Parks	3621 C St. Anch. Anch.	99503		267-8700	Y <input checked="" type="radio"/> N	HB 231
A. Carpenter	Law	Room 717 Ct Bldg	99511		465-3424	Y <input checked="" type="radio"/> N	HB 245
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
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