

HB

245



Alaska State Legislature

- Interim (May-Dec.) -
10928 Eagle River Rd., Suite 140
Eagle River, Alaska 99577
☎ (907) 694-6683
FAX (907) 694-1015

- Session (Jan.-May) -
Alaska State Capitol
Juneau, Alaska 99801-1182
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

April 15, 1997

Representative Jeannette James
Chair, House State Affairs Committee
Alaska State Capitol
Juneau, Alaska 99801

Dear Jeannette,

House Bill 245 has been referred to your committee for an initial hearing. Recognizing that the committee is very busy with numerous issues, we request the bill be waived to its next committee of referral, the House Judiciary Committee.

HB 245 does two very important things. First, it establishes minimum sentences for repeat domestic violence offenders. Second, it precludes accused criminals from contacting their alleged victims following arrest. This latter step has been specifically requested by victims groups and police departments throughout Alaska.

Many organizations have expressed approval of this legislation and assured us letters of support are on the way. If you have any questions or concerns we would be happy to answer them.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Dyson".

Fred Dyson

A handwritten signature in black ink, appearing to read "Ethan Berkowitz".

Ethan Berkowitz

cc: Representative Al Vezey
Representative Mark Hodgins
Representative Ivan Ivan
Representative Kim Elton
Representative Joe Green

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

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


**HOUSE OF REPRESENTATIVES
COSPONSOR REQUEST**

TO: CHIEF CLERK

Please add my name as ^{PRIME} cosponsor and remove it as co-
to the following: Sponsor

HB 245

*Use one slip for each request.


Member's Signature
4/17/97
Date

Send to Chief Clerk before consideration
of the daily calendar.


**HOUSE OF REPRESENTATIVES
COSPONSOR REQUEST**

TO: CHIEF CLERK

Please add my name as cosponsor and remove it
to the following:

HB 245

*Use one slip for each request.


Member's Signature
4/17/97
Date

Send to Chief Clerk before consideration
of the daily calendar.

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

May 7, 1997

SUBJECT: CSHB 245(JUD) (Work Order No. 20-LS0450\L)

TO: Representative Joe Green
Attn: Lisa Kirsch

FROM: Gerald P. Luckhaupt *JEP*
Legislative Counsel

Enclosed is the final CS(JUD) you requested. I have two comments concerning the CS(JUD).

1. Amendment 2 adopted by the committee adds a new bill sec. 2, p. 2, lines 1 - 6. 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 of 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. I believe this new crime 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. I recommend that this new offense be added to AS 11.

2. The first amendment adopted by the committee amended AS 12.55.135(c). See bill sec. 3, p. 2. This amendment provides 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 Therefore, I recommend that the following language be inserted on p. 2, line 8, following "degree": ", that is a crime involving domestic violence,". If this is not done, then the title needs to be changed.

GPL:lmb:glc
97-077.lmb
Enclosure

¹After my conversation with Lisa Kirsch, Judiciary Staff Attorney and upon further reflection, I believe that this concern is also applicable to the existing language of AS 12.55.135(c) dealing with domestic violence orders.

CS FOR HOUSE BILL NO. 245(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to minimum sentences for assault in the fourth degree that is
2 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 12.25.150(b) is amended to read:

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

1 arrested.

2 * Sec. 2. AS 12.25.150 is amended by adding a new subsection to read:

3 (e) A person is guilty of a class B misdemeanor if the person is a prisoner and,
4 in exercising a right granted under (b) of this section, communicates or attempts to
5 communicate with the alleged victim of the crime that was the basis of the prisoner's
6 arrest.

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

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

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

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

17 (1) 30 days if the defendant has been previously convicted of a crime
18 against a person or a crime involving domestic violence;

19 (2) 60 days if the defendant has been previously convicted two or more
20 times of a crime against a person or a crime involving domestic violence, or a
21 combination of those crimes.

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

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

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

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

27 (i) In this section,

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

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

1 AS 18.66.990.

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

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

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

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

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

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

19 (2) AS 12.55.125(l),

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

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

28 (3) AS 12.55.135(g).

29 (A) a prior conviction may not be considered if a period of
30 five or more years has elapsed between the date of the defendant's
31 unconditional discharge on the immediately preceding offense and

1 commission of the present offense unless the prior conviction was for an
 2 unclassified or class A felony:

3 (B) a conviction in this or another jurisdiction of an offense
 4 having elements similar to those of a crime against a person or a crime
 5 involving domestic violence is considered a prior conviction:

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

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

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

18 (1) denies

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

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

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

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

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

25 law;

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

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

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

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

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

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

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

18 (g) In this section,

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

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

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

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

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

30 * Sec. 10. AS 12.55.150(b), as amended by sec. 1 of this Act, amends Rule 5(b), Alaska
31 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate

1 immediately after arrest.

2 * Sec. 11. AS 12.55.150(b), as amended by sec. 1 of this Act, and sec. 9 of this Act take
3 effect only if secs. 9 and 10 of this Act receive the two-thirds majority vote of each house
4 required by art. IV, sec. 15, Constitution of the State of Alaska.

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

0-LS0450AK
Luckhaupt
4/28/97

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

BY

Offered:
Referred:

Sponsors: REPRESENTATIVES DYSON, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to minimum sentences for assault in the fourth degree that is
2 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 12.25.150(b) is amended to read:

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

1 arrested.

2 * Sec. 2. AS 12.55.135(c) is amended to read:

3 (c) A defendant convicted of assault in the fourth degree committed in violation
4 of the provisions of an order issued or filed under AS 18.66.100 - 18.66.180 and not
5 subject to sentencing under (g) of this section [OR ISSUED UNDER FORMER
6 AS 25.35.010 OR 25.35.020] shall be sentenced to a minimum term of imprisonment
7 of 20 days.

8 * Sec. 3. AS 12.55.135 is amended by adding new subsections to read:

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

12 (1) 30 days if the defendant has been previously convicted of a crime
13 against a person or a crime involving domestic violence;

14 (2) 60 days if the defendant has been previously convicted two or more
15 times of a crime against a person or a crime involving domestic violence, or a
16 combination of those crimes.

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

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

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

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

22 (i) In this section,

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

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

28 * Sec. 4. AS 12.55.145(a) is amended to read:

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

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

31 (A) a prior conviction may not be considered if a period of 10

1 or more years has elapsed between the date of the defendant's unconditional
2 discharge on the immediately preceding offense and commission of the present
3 offense unless the prior conviction was for an unclassified or class A felony;

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

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

14 (2) AS 12.55.125(l),

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

18 (B) commission of and conviction for offenses relied on as prior
19 most serious felony offenses must occur in the following order: conviction for
20 the first offense must occur before commission of the second offense, and
21 conviction for the second offense must occur before commission of the offense
22 for which the defendant is being sentenced;

23 (3) AS 12.55.135(g),

24 (A) a prior conviction may not be considered if a period of
25 10 or more years has elapsed between the date of the defendant's
26 unconditional discharge on the immediately preceding offense and
27 commission of the present offense unless the prior conviction was for an
28 unclassified or class A felony;

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

1 (C) two or more convictions arising out of a single,
 2 continuous criminal episode during which there was no substantial change
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 7 same criminal episode or objective.

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9 (c) The defendant shall file with the court and serve on the prosecuting
 10 attorney notice of denial, consisting of a concise statement of the grounds relied upon
 11 and that may be supported by affidavit or other documentary evidence, no later than
 12 10 days before the date set for the imposition of sentence if the defendant

13 (1) denies

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

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

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

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

19 (ii) most serious felony, defined as such under Alaska
 20 law;

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

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

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

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

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

30 (d) Matters alleged in a notice of denial shall be heard by the court sitting
 31 without a jury. If the defendant introduces substantial evidence that the defendant is

1 not the person named in a prior judgment of conviction, that the judgment is not
2 authentic. that the conviction did not occur within the period specified in (a)(1)(A) or
3 (3)(A) of this section, that a conviction should not be considered a prior felony
4 conviction under (a)(1)(B) of this section, [OR] a prior most serious felony conviction
5 under (a)(2)(A) of this section, or a prior crime against a person or a crime
6 involving domestic violence conviction under (a)(3)(B) of this section, or that a
7 previous conviction did not occur in the order required under (a)(2)(B) of this section,
8 then the burden is on the state to prove the contrary beyond a reasonable doubt. The
9 burden of proof that two or more convictions should be considered a single conviction
10 under (a)(1)(C) or (3)(C) of this section is on the defendant by clear and convincing
11 evidence.

12 * Sec. 7. AS 12.55.145 is amended by adding a new subsection to read:

13 (g) In this section,

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

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

16 AS 18.66.990.

17 * Sec. 8. Rule 5(b), Alaska Rules of Criminal Procedure, is amended to read:

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

19 Immediately after arrest, the prisoner shall have the right forthwith to telephone or
20 otherwise to communicate with both an attorney and any relative or friend, except that
21 the prisoner may not communicate with the alleged victim of the crime that was
22 the basis of the prisoner's arrest. Any attorney at law entitled to practice in the
23 courts of Alaska, at the request of either the prisoner or any relative or friend of the
24 prisoner, shall have the right forthwith to visit the prisoner in private.

25 * Sec. 9. AS 12.55.150(b), as amended by sec. 1 of this Act, amends Rule 5(b), Alaska
26 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
27 immediately after arrest.

28 * Sec. 10. AS 12.55.150(b), as amended by sec. 1 of this Act, and sec. 8 of this Act take
29 effect only if secs. 8 and 9 of this Act receive the two-thirds majority vote of each house
30 required by art. IV, sec. 15, Constitution of the State of Alaska.

31 * Sec. 11. References to previous convictions in this Act apply to all convictions occurring

1 before, on, or after the effective date of this Act.

HOUSE COMMITTEE REPORT

5/7/97

Finance

(7)
Date Referred to Committee: April 25, 1997

FURTHER REFERRALS:

Date of Committee Action: 5/6/97

The JUDICIARY 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 (Jud) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

fiscal note(s) _____

APPROVES PREVIOUS: (Dept/Date)

INDETERMINATE
 fiscal note(s) ADMIN(PD) & CORRECTIONS
4.25.97

zero fiscal note(s) _____

zero fiscal note(s) LAW & DPS
4.25.97

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Nancy Rokeberg</u> ROKEBERG			<input checked="" type="checkbox"/>	
<u>Mike Croft</u> CROFT	<input checked="" type="checkbox"/>			
<u>Brian Porter</u> PORTER	<input checked="" type="checkbox"/>			
<u>Wendy Green</u> GREEN	<input checked="" type="checkbox"/>			
<u>James James</u> JAMES	<input checked="" type="checkbox"/>			
<u>Wendy Bunde</u> BUNDE	<input checked="" type="checkbox"/>			
<u>Cheryl Berkowitz</u> BERKOWITZ	<input checked="" type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

CHAIR'S SIGNATURE [Signature]

ATTN: JERRY LUCKHAUPT

05/02/97

K-1

AMENDMENT (b: 1)

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 245 work draft 0-LS0450K

Page 2, line 4;

Following "18.66.180",

insert "or AS 12.30.025 - 12.30.027"

05/02/97

K-2

AMENDMENT #2

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 245 work draft 0-LS0450\K

Page 2, line 1;

Following line 1 insert,

"Sec. 2. AS 12.25.150 is amended by adding a new subsection to read:

(e) A person is guilty of a class B misdemeanor if the person is a prisoner who, in exercising a right granted under (b) of this section, communicates or attempts to communicate with the alleged victim of the crime that was the basis of the prisoner's arrest."

renumber following sections accordingly

05/02/97

K-3

AMENDMENT

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House Bill 245 work draft 0-LS0450\K

Page 3, line 25;

Preceding "or",

delete "10", insert "5"

Proposed amendment to HB 245

Add a new section in the bill:

* Sec. 2. AS 12.25.150(c) is repealed and reenacted to read:

(c) A person is guilty of a class B misdemeanor if the person is

(1) a peace officer or correctional officer having custody of a prisoner immediately after arrest, and the officer refuses to grant the prisoner the rights provided in this section; or

(2) a prisoner who, in exercising a right granted under (b) of this section, communicates or attempts to communicate with the alleged victim of the crime that was the basis of the prisoner's arrest.



Alaska State Legislature

Winter (May-Dec)
1952+ Eagle River Rd. Suite 140
Eagle River Alaska 99577
☎ (907) 694-6663
FAX (907) 694-1015

Session (Jan-May)
Alaska State Capitol
Juneau Alaska 99801-1142
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

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.aknpublicans.org>

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

April 12, 1997

SUBJECT: Sectional Summary - HB 245 (W.O.20LS0450\F)

TO: Representative Ethan Berkowitz
Attn: Patrick Flynn

FROM: Gerald P. Luckhaupt *GLP*
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 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 2 of the bill provides that this section only applies for sentencing purposes if AS 12.55.135(g) does not apply.

Section 3 of the bill establishes minimum sentences for persons engaging in domestic violence by violating AS 11.41.230, assault in the fourth degree.

Section 4 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.

Section 5 of the bill provides a notice section to announce that sec. 1 of the bill effects a court rule change.

Section 6 of the bill provides that secs. 1 and 4 only take effect if those sections receive the two-thirds vote required under the Constitution for court rule changes.

Section 7 of the bill provides an applicability section.

GPL:lmb
97-051.lmb

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 *Difson*
 Requestor: H. State Affairs 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. Olte* Date: _____
 Agency: Ronald L. Olte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 245

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						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (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	0.0	0.0	0.0

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

POSITIONS

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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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 245

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						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

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 (FY97) cost: \$ 0.0

POSITIONS

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

BILL NO. HB 245

Revision Date: _____

Department Affected: Administration

Title: "An Act relating to minimum sentences for assault in the fourth degree that is a crime involving domestic violence..."

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Representative Dyson

Requestor: (H) JUD

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)

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:

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 Boyer
Agency: Department of Administration

Barbara K. Brink
Date: 4/23/97

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ANALYSIS: (continued)

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.

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

*House Judiciary Standing Committee,
4/29/97, 1:05 p.m.*