

HB

245

SENATE COMMITTEE REPORT

DATE: 5/1/98

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/6/98

HESS Committee considered

CS FOR HOUSE BILL NO. 245(RLS) am

DOMESTIC VIOLENCE ASSAULTS; PRISONER CONTACTS

and recommends:

- be replaced with S CS CS HB 245 (HES)
- adopt previous CS
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR#

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Steven D. Jensen</i>	<input checked="" type="checkbox"/>	<i>Lyda Green</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Amey We</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Public Admin - Detender	3/27/98		***
Corrections	2/18/98		***
Public Admin - Advocacy	2/19/98	<input checked="" type="checkbox"/>	
Public Safety	2/19/98	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Passed out as amended

CS FOR HOUSE BILL NO. 245(RLS) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Amended: 4/30/98

Offered: 3/31/98

Sponsor(s): REPRESENTATIVES DYSON, Berkowitz, Hodgins

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to assault in the fourth degree; relating to the definition of
2 'crime involving domestic violence' in AS 11; relating to unlawful contact with a
3 victim or witness; relating to rehabilitation programs for perpetrators of domestic
4 violence; amending Rule 5(b), Alaska Rules of Criminal Procedure and Rule
5 404(b), Alaska Rules of Evidence; and providing for an effective date."

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

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

11 as

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

13 (B) as a condition of

1 (i) release under AS 12.30;

2 (ii) probation under AS 12.55.101; or

3 (iii) parole under AS 33.16.150; and

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

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

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

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

10 (1) the person is arrested for a crime against a person under AS 11.41
11 or a crime involving domestic violence; and

12 (2) before the person's initial appearance before a judge or magistrate
13 or before dismissal of the charge for which the person was arrested, whichever occurs
14 first, the person initiates communication or attempts to initiate communication with the
15 alleged victim of the crime that was the basis for the person's arrest.

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

17 * Sec. 3. AS 11.56 is amended by adding a new section to read:

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

19 (1) "victim" has the meaning given in AS 12.55.185; and

20 (2) "witness" has the meaning given in AS 12.61.900.

21 * Sec. 4. AS 11.81.900(b) is amended by adding a new paragraph to read:

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

24 * Sec. 5. AS 12.25.150(b) is amended to read:

25 (b) Immediately after an arrest, a prisoner shall have the right to telephone or
26 otherwise communicate with the prisoner's attorney and any relative or friend, and any
27 attorney at law entitled to practice in the courts of Alaska shall, at the request of the
28 prisoner or any relative or **friend** [FRIENDS] of the prisoner, have the right to
29 immediately visit the person arrested. **This subsection does not provide a prisoner**
30 **with the right to initiate communication or attempt to initiate communication**
31 **under circumstances proscribed under AS 11.56.755.**

1 * Sec. 6. AS 12.55.015(a) is amended to read:

2 **Sec. 12.55.015. Authorized sentences; forfeiture.** (a) Except as limited by
3 AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted
4 of an offense, may singly or in combination

5 (1) impose a

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

8 (B) day fine when authorized by law and as provided in
9 AS 12.55.036 [,] if the court does not impose a term of periodic or continuous
10 imprisonment or place the defendant on probation;

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

13 (3) impose a definite term of periodic imprisonment;

14 (4) impose a definite term of continuous imprisonment;

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

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

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

20 (8) suspend imposition of sentence under AS 12.55.085;

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

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

29 (11) order the forfeiture to the state of a motor vehicle, weapon,
30 electronic communication device, or money or other valuables, used in or obtained
31 through an offense that was committed for the benefit of, at the direction of, or in

1 association with a criminal street gang;

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

5 * Sec. 7. AS 12.55.101(a) is amended to read:

6 (a) Before granting probation to a person convicted of a crime involving
 7 domestic violence, the court shall consider the safety and protection of the victim and
 8 any member of the victim's family. If a person convicted of a crime involving
 9 domestic violence is placed on probation, the court may order the conditions
 10 authorized in AS 12.55.100 and AS 18.66.100(c)(1) - (7) and (11), and may

11 (1) require the defendant to participate in and complete to the
 12 satisfaction of the court one or more programs for the rehabilitation of perpetrators of
 13 domestic violence that meet the standards set by, and that are approved by, the
 14 Department of Corrections under AS 44.28.020(b) [,] if the program is available in the
 15 community where the defendant resides; the court may not order a defendant to
 16 participate in or complete a program for the rehabilitation of perpetrators of
 17 domestic violence that does not meet the standards set, and that is not approved,
 18 by the Department of Corrections under AS 44.28.020(b);

19 (2) require the defendant to refrain from the consumption of alcohol;

20 and

21 (3) impose any other condition necessary to protect the victim and any
 22 members of the victim's family, or to rehabilitate the defendant.

23 * Sec. 8. AS 12.55.135(c) is amended to read:

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

29 * Sec. 9. AS 12.55.135 is amended by adding new subsections to read:

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

1 of

2 (1) 30 days if the defendant has been previously convicted of a crime
3 against a person or a crime involving domestic violence;

4 (2) 60 days if the defendant has been previously convicted two or more
5 times of a crime against a person or a crime involving domestic violence, or a
6 combination of those crimes.

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

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

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

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

12 (i) In this section,

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

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

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

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

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

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

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

28 (C) two or more convictions arising out of a single, continuous
29 criminal episode during which there was no substantial change in the nature of
30 the criminal objective are considered a single conviction unless the defendant
31 was sentenced to consecutive sentences for the crimes; offenses committed

1 while attempting to escape or avoid detection or apprehension after the
2 commission of another offense are not part of the same criminal episode or
3 objective;

4 (2) AS 12.55.125(l),

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

8 (B) commission of and conviction for offenses relied on as prior
9 most serious felony offenses must occur in the following order: conviction for
10 the first offense must occur before commission of the second offense, and
11 conviction for the second offense must occur before commission of the offense
12 for which the defendant is being sentenced;

13 (3) AS 12.55.135(g).

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

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

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

29 * Sec. 11. AS 12.55.145(c) is amended to read:

30 (c) The defendant shall file with the court and serve on the prosecuting
31 attorney notice of denial, consisting of a concise statement of the grounds relied upon

1 and that may be supported by affidavit or other documentary evidence, no later than
2 10 days before the date set for the imposition of sentence if the defendant

3 (1) denies

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

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

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

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

9 (ii) most serious felony, defined as such under Alaska
10 law;

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

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

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

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

19 * Sec. 12. AS 12.55.145(d) is amended to read:

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

1 evidence.

2 * Sec. 13. AS 12.55.145 is amended by adding a new subsection to read:

3 (g) In this section,

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

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

6 AS 18.66.990.

7 * Sec. 14. AS 18.66.100(c)(15) is amended to read:

8 (15) order the respondent, at the respondent's expense, to participate in

9 (A) a program for the rehabilitation of perpetrators of domestic violence that meets the
10 standards set by, and that is approved by, the Department of Corrections under

11 AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances,

12 or both; a protective order under this section may not require a respondent to

13 participate in a program for the rehabilitation of perpetrators of domestic

14 violence unless the program meets the standards set by, and that is approved by,

15 the Department of Corrections under AS 44.28.020(b);

16 * Sec. 15. AS 33.16.150(f) is amended to read:

17 (f) In addition to other conditions of parole imposed under this section, the

18 board may impose as a condition of special medical, discretionary, or mandatory parole

19 for a prisoner serving a term for a crime involving domestic violence (1) any of the

20 terms of protective orders under AS 18.66.100(c)(1) - (7); (2) a requirement that, at

21 the prisoner's expense, the prisoner participate in and complete, to the satisfaction of

22 the board, a program for the rehabilitation of perpetrators of domestic violence that

23 meets the standards set by, and that is approved by, the department under

24 AS 44.28.020(b); and (3) any other condition necessary to rehabilitate the prisoner.

25 The board shall establish procedures for the exchange of information concerning the

26 parolee with the victim and for responding to reports of nonattendance or

27 noncompliance by the parolee with conditions imposed under this subsection. The

28 board may not under this subsection require a prisoner to participate in and

29 complete a program for the rehabilitation of perpetrators of domestic violence

30 unless the program meets the standards set by, and is approved by, the

31 department under AS 44.28.020(b).

1 * Sec. 16. AS 44.28.020(b) is amended to read:

2 (b) The department shall, with the approval of the Council on Domestic
3 Violence and Sexual Assault, adopt standards, by regulation, for rehabilitation
4 programs for perpetrators of domestic violence as defined in AS 18.66.990 and for the
5 approval of those programs. For purposes of AS 12.55.101, AS 18.66.100(c), and
6 AS 33.16.150(f), the department shall approve a program if the department
7 determines that the [DETERMINE WHETHER A] program meets the standards.
8 Upon application of a program, the department may waive one or more standards
9 and approve the program if the department determines

10 (1) there is good cause for the waiver;

11 (2) the safety of victims and children is not compromised by the
12 waiver;

13 (3) an acceptable alternative is provided by the program.

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

15 (b) **Rights of Prisoner to Communicate With Attorney or Other Person.**
16 Immediately after arrest, the prisoner shall have the right forthwith to telephone or
17 otherwise to communicate with both an attorney and any relative or friend. Any
18 attorney at law entitled to practice in the courts of Alaska, at the request of either the
19 prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit
20 the prisoner in private. This subsection does not provide a prisoner with the right
21 to initiate communication or attempt to initiate communication under
22 circumstances proscribed under AS 11.56.755.

23 * Sec. 18. Rule 404(b)(3), Alaska Rules of Evidence, is amended to read:

24 (3) In a prosecution for a crime of sexual assault in any degree,
25 evidence of other sexual assaults or attempted sexual assaults by the defendant
26 against the same or another person is admissible if the defendant relies on a
27 defense of consent. In a prosecution for a crime of [OR] attempt to commit sexual
28 assault in any degree, evidence of other sexual assaults or attempted sexual assaults
29 by the defendant against the same or another person is admissible [IF THE
30 DEFENDANT RELIES ON A DEFENSE OF CONSENT].

31 ~~* Sec. 19. Rule 404(b)(4), Alaska Rules of Evidence, is amended to read:~~

1 (4) In a prosecution for a crime involving domestic violence or of
2 interfering with a report of a crime involving domestic violence, evidence of other acts
3 of [CRIMES INVOLVING] domestic violence by the defendant against the same or
4 another person or of interfering with a report of a crime involving domestic violence
5 is admissible. In this paragraph, "domestic violence" and "crime involving domestic
6 violence" have the meanings given in AS 18.66.990.

7 * ~~Sec. 20.~~ AS 11.56.745(b) is repealed.

8 * **Sec. 21.** AS 12.25.150(b), as amended by sec. 5 of this Act, amends Rule 5(b), Alaska
9 Rules of Criminal Procedure, by limiting the people with whom a prisoner may communicate
10 immediately after arrest.

11 * **Sec. 22.** Sections 2, 5, and 17 of this Act take effect only if secs. 17 and 21 of this Act
12 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
13 of the State of Alaska.

14 * **Sec. 23.** APPLICABILITY. (a) The changes made by secs. 5, 17, and 21 of this Act
15 apply to persons arrested for offenses occurring before, on, or after the effective date of this
16 Act.

17 (b) Sections 18 and 19 of this Act apply to a criminal or juvenile proceeding held on
18 or after the effective date of secs. 18 and 19 of this Act regardless of whether the criminal
19 offense occurred before, on, or after the effective date of secs. 18 and 19 of this Act.

20 (c) References to previous convictions in this Act apply to all convictions occurring
21 before, on, or after the effective date of this Act.

22 * **Sec. 24.** Sections 7 and 14 - 15 of this Act take effect on the later of (1) January 1,
23 1999, or (2) six months after the effective date of the regulations adopted by the Department
24 of Corrections under AS 44.28.020(b), as amended by sec. 16 of this Act, relating to the
25 approval of rehabilitation programs for perpetrators of domestic violence. The lieutenant
26 governor and the commissioner of corrections shall notify the revisor of statutes when the
27 regulations are filed.

28 * **Sec. 25.** Except for secs. 7 and 14 - 15, this Act takes effect immediately under
29 AS 01.10.070(c).

FISCAL NOTE

No: 9

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 245 (RLS)
(H) Publish Date: 3/31/98

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) Rules

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	**	**	**	**	**	**
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 (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

Date: 3/31/98

COMMITTEE COST

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 245 (FIN)

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

This CS creates a new A misdemeanor crime if a person knowingly attempts to or directly or indirectly contacts a victim or witness in violation of a court ordered sentence, condition of release, probation or parole. It also creates a class B misdemeanor offense if a person initiates communication with the alleged victim of a domestic violence crime or crime against a person that was the basis of the prisoner's arrest.

This bill also 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 within the last 5 years for any domestic violence crime or 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

No: 6

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 245 (FIN)
(H) Publish Date: 2/27/98

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 Boyer
Agency: Department of Administration

Date: 2/19/98

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FISCAL NOTE

No: 5

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: Bill Version: CSHB 245 (FIN)
(H) Publish Date: 2/27/98

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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Mail Stop 3101

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

MEMORANDUM

March 27, 1998

SUBJECT: Sectional Summary - CSHB 245() (Work Order No. 20-LS0450'Z)

TO: Representative Fred Dyson
Attn: Lisa

FROM: Gerald P. Luckhaupt, *GL*
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.

Sections 1, 2, 3, and 4 of the bill amend AS 11.56 (and add a definition to AS 11.81.900(b)) by creating new crimes that provide 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 or a witness to the prisoner's offense.

Section 5 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 or a witness.

Section 6 of the bill authorizes a court, when sentencing a defendant for a crime, to order the defendant to have no contact with the victim or witness of the offense

Sections 7, 14, 15, and 16 of the bill provide that domestic violence rehabilitation programs must be approved by the Department of Corrections.

Section 8 of the bill provides that this section only applies for sentencing purposes if AS 12.55.135(g) does not apply.

Section 9 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 10 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).

Representative Fred Dyson

March 27, 1998

Page 2

Sections 11 - 13 of the bill provide conforming changes to the change made in section 5 of the bill.

Section 17 of the bill amends Rule 5(b), Alaska Rules of Criminal Procedure, to provide a change that corresponds to the change made in secs. 1-4 and 5-6 of the bill.

Section 18 of the bill amends Rule 404(b)(3), Alaska Rules of Evidence, by providing that evidence of prior sexual assaults are admissible in a prosecution for (1) sexual assault only if the defendant relies on a defense of consent, and (2) attempted sexual assault.

Section 19 of the bill amends Rule 404(b)(4), Alaska Rules of Evidence, to specify that evidence of other "acts of" domestic violence are admissible in domestic violence prosecutions.

Section 20 of the bill provides a repealer.

Section 21 of the bill provides a notice section to announce that sec. 5 of the bill effects a court rule change.

Section 22 of the bill provides that secs. 2, 5 and 17 only take effect if those sections receive the two-thirds vote required under the Constitution for court rule changes.

Section 23 of the bill provides an applicability section.

Sections 24 and 25 of the bill provide effective dates.

GPL:jdr:glc

98-204.jdr



REPRESENTATIVE FRED DYSON

CSHB 245 (revised) Sponsor Statement

"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 five 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 contacting victims following arrest before arraignment, this includes their "one phone call". Victims groups and police departments throughout Alaska recognize this as another important step in the fight for victims' rights.

Third, this legislation creates the crime of "Unlawful Contact with a Crime Victim" which allows judges and prosecutors to better enforce restraining orders.

Fourth, it clarifies the original intent of the "1996 Domestic Violence Prevention and Victims Protection Act" intent with regard to batterer programs. The courts may not refer a batterer to a program unless it meets the Department of Corrections standards.

Finally, the bill allows evidence of other sexual assaults or attempted sexual assaults when prosecuting an attempt of sexual assault. It also unifies Rule 404 language by using the common Rule 404 language of "acts of domestic violence" which requires proof that the act had been committed. This will prevent any confusion on evidence inclusion, which has caused some judges to require a prior conviction and many other judges to require proof the act had been committed.

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

Alaska State Legislature

- Interim (May-Dec) -
223 Eagle River Rd. Suite 140
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- Session (Jan-May) -
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- E-mail -
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**ALASKA NETWORK ON
DOMESTIC VIOLENCE AND SEXUAL ASSAULT**
130 Seward, Rm 501 Juneau, Alaska 99801 (907) 586-3650 (907) 463-4493fx

Comments HB245
April 1998

The Alaska Network on Domestic Violence and Sexual Assault (Network) is the statewide coalition of community domestic violence and sexual assault intervention programs for Alaska.

The Network supports HB245. The bill:

* Makes it unlawful for a person arrested for a crime against a person or a crime involving domestic violence to initiate communication or attempt to initiate communication with the alleged victim of the crime prior to the person's initial appearance before a judge or magistrate or before dismissal of the charge whichever occurs first.

* Establishes minimum sentences for repeat dv convictions--30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence; 60 days if previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

The sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served; imposition of the sentence may not be suspended; and the minimum term or imprisonment may not otherwise be reduced.

* Clarifies the intent of the DV Act requiring courts who choose to order perpetrators to rehabilitation programs to only order to programs that are approved by DOC.

* Amends Court Rule 404(b)(3) to clarify that in a prosecution for a crime of sexual assault in any degree, evidence of other sexual assaults or attempted sexual assault by the defendant against the same or another person is admissible if the defendant relies on a defense of consent.

* Amends Court Rule 404(b)(4) to read acts of domestic violence instead of [crimes involving] domestic violence to clarify what evidence can be presented in court against a defendant.

Please add your voice of support to HB245 and vote for its passage.

facsimile
TRANSMITTAL

Packet
02 245

To: The Honorable Fred Dyson

Of: Alaska State House of Representatives

Fax: 465-4587

Pages: 1, including this cover sheet.

Date: February 18, 1998

Re: CSHB 245, "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"

Representative Dyson:

Thank you for sponsoring this bill. I have read through it and find that it will address problems experienced by victims of domestic violence which is a population our agency serves. It is also my hope that provisions of the bill also will aid in discouraging incidents of domestic violence.

If you would like any supporting information from our agency, please just let me know.

cc: House Finance Committee Members

FEB 19 1998

From the desk of...

Sandy Sameniago
Executive Director
Women In Crisis - Counseling & Assistance
717 Ninth Avenue
Fairbanks, AK 99701
907-452-2293
Fax 907-452-2613

February 19, 1998

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

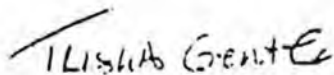
Dear Representative Dyson:

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



1037 W. Firwood Ln, Suite 130
Anchorage, Alaska 99503

Business 907/276-7277
24 Hour Crisis 907/276-7273
Toll Free 1-800-475-1999
Fax 907/276-9983
TTY 907/276-9988

2/19/98

Ms Debra A Pexa
P.O. box 2467 Valdez
Valdez AK. 99686 835-2999

Advocates for victims of violence

Supports

BILL#: HB 245 DOM. VIOL. ASSAULTS;PRISONER CONTACTS

MESSAGE: I SUPPORT HB245. OFTEN PERPETRATORS OF
DOMESTIC VIOLENCE WILL CONTACT THEIR VICTIMS IN ORDER TO
MANIPULATE OR THREATEN THEM. THIS BILL WOULD CREATE AN
IMPORTANT PROTECTION FOR VICTIMS ALLOWING THEM TO STAY
SAFE. THANKYOU FOR YOUR SUPPORT.
DISTRIBUTION: 13

cc:Mail for: Representative Fred Dyson

Subject: jail space

From: ruawaic@aonline.com (Administration) at CC2MHS1 3/4/98 8:48 AM

To: Representative Fred Dyson at LAA_TRANS

Whereas, the mission of the Abused Women's Aid In Crisis is to teach people to live and love without violence
and
Whereas, domestic violence is a crime
and
Whereas, it is vital that Anchorage give its citizens a consistent message that domestic violence will not be tolerated
and
Whereas, the current shortage of jail space makes it unusual for the perpetrators of domestic violence to serve jail sentences
Therefor, the Board of Director's of Abused Women's Aid In Crisis resolve to support the expansion of jail space for the Municipality of Anchorage.

Marj Blixhavn
AWAIC Board President



Kenai-Soldotna Women's Resource & Crisis Center

March 31, 1998

Representative Fred Dyson
State Capitol
Juneau, AK 99801-1182

Dear Representative Dyson:

We strongly support HB245. Thank you for taking action to further protect victims!

Sincerely,

Brenda G. Wieffering
Executive Director

cc:Mail for: Representative Fred Dyson

Subject: CSHB245

From: ruawaic@aonline.com (Administration) at CC2MHS1 2/19/98 10:24 AM

To: Representative Fred Dyson at LAA_TRANS

February 17, 1998

To: Rep. Dyson

From: Jan MacClarence, Executive Director, AWAIC

I'd like to offer support for CSHB245, graduated penalties for repeat 4th degree assault dv offenses. I appreciate the serious approach that this bill takes to the issue of domestic violence. Section two's penalty for contacting the victim immediately after arrest is particularly important. Our shelter advocates witness continued harassment of victims from jail. Your bill will help us send a message that domestic violence is not acceptable in Alaska. Thank you.