

HB

127

<TARGET><BILL>HB 127</BILL><SUBJECT>HB
127</SUBJECT><COMM>HFIN27</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
Bill Version HB 127
(H) Publish Date 1/26/11

Identifier (file name): LL1840-DPS-DET-01-12-11 Dept. Affected Public Safety
Title "An Act relating to the crimes of stalking, online enticement ... of a minor, related offenses, and misconduct..." Appropriation Alaska State Troopers
Allocation AST Detachments
Sponsor Rules Committee
Requester Governor OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version

Not applicable, initial version.

Prepared by Lt. Rodney Dial
Division Alaska State Troopers
Approved by Joseph Masters, Commissioner
Department of Public Safety

Phone 907-247-4480
Date/Time 1/24/11 2:20 PM
Date 1/12/2011

Analysis

This bill expands the crime of stalking by adding to the definition of nonconsensual contact, monitoring the victim with a GPS device and using or installing a device to record or photograph events concerning the victim. It also increases penalties for unlawful exploitation of a minor, online enticement of a minor, and provides for the prosecution of offenders from out of state. Finally, this bill adopts new offenses to include: sending explicit images of a minor, and misconduct involving confidential information.

Passage of this legislation will have no fiscal impact on the department.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 2
Bill Version HB 127
(H) Publish Date 1/26/11

Identifier (file name): 1840-LAW-CRIM-01-11-11
Title An act relating to crimes of stalking, online enticement, and exploitation of a minor, harassment, distribution of indecent material to a minor, and misconduct.
Sponsor Rules
Requester Request of the Governor
Dept. Affected Law
Appropriation Criminal
Allocation Criminal Justice Litigation
OMB Component Number 2203

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
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	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 Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

Prepared by Dave Blaisdell, Director
Division Administrative Services
Approved by John J. Burns, Attorney General
Department of Law

Phone 465-3673
Date/Time 1/11/11 12:00 AM
Date 1/11/2011

Analysis

This bill amends the law relating to stalking by adding to the definition of nonconsensual conduct methods of contacting people with modern technology such as global positioning systems. It makes a clarifying amendment to AS 11.51.100, which prohibits endangering the welfare of a minor. It adopts new statutes to prohibit sending an explicit image of a minor and misconduct involving confidential information. It also increases the penalties for the crimes of online enticement of a minor and unlawful exploitation of a minor. The bill makes it clear that the commissioner of corrections may, in his or her discretion, provide supervised probation to a person on probation for conviction of a misdemeanor.

Although the bill would adopt new crimes we believe that they can be prosecuted with current resources.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 3
 Bill Version HB 127
 (H) Publish Date 1/26/11

1840-DOA-PDA-1-12-11
 Title An Act relating to the crimes of stalking, online enticement ...
 Sponsor Rules Committee
 Requester Governor
 Dept. Affected Administration
 Appropriation Legal and Advocacy Services
 Allocation Public Defender Agency
 OMB Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	***		***	***	***	***	***	***
CAPITAL EXPENDITURES								
CHANGE IN REVENUES								

FUND SOURCE (Thousands of Dollars)

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL							

Estimate of any current year (FY2011) cost _____

POSITIONS

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

Prepared by Quinlan Steiner, Director
 Division Public Defender Agency
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907 334-4414
 Date/Time 1/12/11 2:45 PM
 Date _____

Analysis

This bill expands the definition of "nonconsensual contact" under stalking; creates a new crime for sending an explicit image of a minor without the consent of the minor's parent; and creates new crimes for obtaining confidential information of another person.

The bill also provides for the prosecution of an out of state individual for online enticement of a minor if the communications involve an individual in the State of Alaska. Finally, the bill specifically permits the Department of Corrections to provide active supervision to a person placed on probation for a misdemeanor offense.

Expanding the definition of nonconsensual contact, creating additional crimes, and providing for supervised misdemeanor probation will likely result in an increase in cases assigned to the Public Defender Agency. It is not possible to reliably predict the number of cases that will be assigned to the Agency, however. The Agency, therefore, submits an indeterminate fiscal note.

FISCAL NOTE #4

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 127

Analysis

DOC averages two new incarcerations per year for the crime of enticement of a minor. This bill would increase the penalty for this crime from a Class C felony to a Class B felony. This change has the potential to increase mandays by 10,220 in FY12 thru FY17. Applying the current cost of care (\$134.21 per day), the increase of cost could be in the range of \$0.0 to \$1,371.60 to DOC.

DOC averages two incarcerations per year for the crime of online enticement of a minor. This bill increases the penalty for this crime from a Class B felony to a Class A felony if the defendant was, at the time of the offense, a registered or required to register as a sex offender or child kidnapper. This would increase the penalty three years. Applying the current daily cost of care (\$134.21 per day), this could potentially increase costs in the range of \$0.0 to \$734.80 to DOC.

DOC averages one new incarceration per year for the crime of unlawful exploitation of a minor. This bill would increase the penalty for this crime from a Class B felony to a Class A felony. This would increase the penalty three years. This has the potential to increase mandays by 5,475 beginning in FY12 thru FY17. Applying the current daily cost of care (\$134.21 per day) could potentially add costs in the range of \$0.0 to \$734.80 to DOC.

Other provisions that the department is unable to quantify at this time but will closely monitor for potential fiscal impact are as follows:

- Adding Monitoring a Person with a Global Positioning Device or Similar Technology Means
- Adding Child Kidnapper to 2(A) under AS12.63
- Adding Sending and Explicit Image of a Minor in the Degree and Second Degree to Statute
- Adding Crimes Involving Minors Committed Out of State, Specifically Online Enticement to Statute
- Adding Online Enticement of a Minor to Statute

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 127(JUD)
 (H) Publish Date: 3/14/11

Identifier (file name): HB127-DHSS-PS-02-04-11 Dept. Affected: Health and Social Services
 Title: Crimes Involving Minors/Stalking/Info Appropriation: Juvenile Justice
 Sponsor: RIs by Request of the Governor Allocation: Probation Services
 Requester: House JUD Committee OMB Component Number: 2134

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	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)

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

N/A

Prepared by: Barbara Henjum, Director
 Division: Juvenile Justice
 Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services

Phone 907.465-2112
 Date/Time 2/4/11 5:00 PM
 Date 2/4/2011

FISCAL NOTE #5

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 127(JUD)

Analysis:

If this bill becomes law, Unlawful Exploitation of a Minor would be a class A felony when committed by an adult or juvenile. Under the Juvenile Delinquency statutes (AS 47.12.030), when a juvenile 16 or older is alleged to have committed an A felony against a person, juvenile jurisdiction does not apply and the juvenile is transferred to the adult system. Increasing the charge class for Unlawful Exploitation of a Minor to an A felony therefore would result in these older juveniles being "autowaived" into the adult system, where they would be subject to adult sentencing guidelines.

Criminal laws that are amended or are increased in the severity of their charge class include Stalking, Online Enticement of a Minor, Unlawful Exploitation of a Minor, Endangering the Welfare of a Child (First Degree), Harassment (Second Degree), and Distribution of Indecent Material to Minors. The bill creates three new offenses: Sending An Explicit Image of a Minor, Misconduct Involving Confidential Information (First Degree), and Misconduct Involving Confidential Information (Second Degree). The bill also adds a clarifying section to Title 12 (Sentencing and Probation) to clarify that a person may be prosecuted under Alaska law for committing Online Enticement of a Minor or Sending an Explicit Image of a Minor even though the defendant may be in another state when the offense was committed. The bill also makes changes to sentencing guidelines of Title 12 to reflect the changes in charge class that are proposed for Unlawful Exploitation of a Minor and Online Enticement of a Minor.

If this bill passes, there would be no financial impact to the Division of Juvenile Justice budget.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version CSHB127(JUD)\B
 () Publish Date _____

Identifier (file name) CSHB127(JUD)-DOA-OPA-3-21-11 Dept. Affected DOA
 Title An Act relating to the crimes of stalking, online enticement . . . Appropriation Legal and Advocacy Services
 Allocation Office of Public Advocacy
 Sponsor Governor
 Requester House Finance OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
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 (please identify)								
TOTAL	***		***	***	***	***	***	***

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Rachel Levitt, Acting Director
 Division Office of Public Advocacy
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone (907) 269-3504
 Date/Time 3/21/11, 5:00 p.m.
 Date 3/22/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB127(JUD)\B

Analysis

This bill expands the definition of "nonconsensual contact" under stalking, specifically prohibits the sending of an explicit image of a minor through various electronic and printed means, and creates a new crime for obtaining the confidential information of another person.

The bill also provides for the prosecution of an out of state individual for online enticement of a minor if the state nexus requirement is met. The bill also specifically allows the Department of Corrections to place a misdemeanor on supervised probation.

The expansion of the definition of "nonconsensual contact", the creation of additional crimes, and increasing the supervision of probationers will likely increase the number of criminal defense cases assigned to the Office of Public Advocacy. The agency is not able to reliably predict the number of new cases, and therefore, the agency cannot precisely predict the resulting fiscal impact on the agency. Accordingly, OPA has submitted an indeterminate fiscal note.

CS FOR HOUSE BILL NO. 127(FIN)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of stalking, online enticement of a minor, unlawful**
2 **exploitation of a minor, endangering the welfare of a child, sending an explicit image of**
3 **a minor, harassment, and misconduct involving confidential information; relating to**
4 **probation; relating to the subpoena power of the attorney general in cases involving use**
5 **of an Internet service account; relating to an appearance before a judicial officer after**
6 **arrest; relating to penalties for operating a vehicle without possessing proof of motor**
7 **vehicle liability insurance or a driver's license; relating to penalties for certain arson**
8 **offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10,**
9 **Alaska Rules of Administration; and providing for an effective date."**

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

11 *** Section 1.** AS 11.41.270(b)(3) is amended to read:

12 (3) "nonconsensual contact" means any contact with another person

1 that is initiated or continued without that person's consent, that is beyond the scope of
 2 the consent provided by that person, or that is in disregard of that person's expressed
 3 desire that the contact be avoided or discontinued; "nonconsensual contact" includes

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

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

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

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

10 (E) contacting that person by telephone;

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

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

14 **(H) following or monitoring that person with a global**
 15 **positioning device or similar technological means;**

16 **(I) using, installing, or attempting to use or install a device**
 17 **for observing, recording, or photographing events occurring in the**
 18 **residence, vehicle, or workplace used by that person, or on the personal**
 19 **telephone or computer used by that person;**

20 * **Sec. 2.** AS 11.41.270(b) is amended by adding a new paragraph to read:

21 (5) "device" includes software.

22 * **Sec. 3.** AS 11.41.452(d) is amended to read:

23 (d) Except as provided in (e) of this section, online enticement is a class **B** [C]
 24 felony.

25 * **Sec. 4.** AS 11.41.452(e) is amended to read:

26 (e) Online enticement is a class **A** [B] felony if the defendant was, at the time
 27 of the offense, required to register as a sex offender or child kidnapper under AS 12.63
 28 or a similar law of another jurisdiction.

29 * **Sec. 5.** AS 11.41.455(c) is amended to read:

30 (c) Unlawful exploitation of a minor is a
 31 [(1)] class **A** [B] felony [; OR

1 (2) CLASS A FELONY IF THE PERSON HAS BEEN
 2 PREVIOUSLY CONVICTED OF UNLAWFUL EXPLOITATION OF A MINOR IN
 3 THIS JURISDICTION OR A SIMILAR CRIME IN THIS OR ANOTHER
 4 JURISDICTION].

5 * **Sec. 6.** AS 11.51.100(a) is amended to read:

6 (a) A person commits the crime of endangering the welfare of a child in the
 7 first degree if, being a parent, guardian, or other person legally charged with the care
 8 of a child under 16 years of age, the person

9 (1) intentionally deserts the child in a place under circumstances
 10 creating a substantial risk of physical injury to the child;

11 (2) leaves the child with another person who is not a parent, guardian,
 12 or lawful custodian of the child knowing that the person is

13 (A) [IS] registered or required to register as a sex offender or
 14 child kidnapper under AS 12.63 or a law or ordinance in another jurisdiction
 15 with similar requirements;

16 (B) [HAS BEEN] charged by complaint, information, or
 17 indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance
 18 in another jurisdiction with similar elements; or

19 (C) [HAS BEEN] charged by complaint, information, or
 20 indictment with an attempt, solicitation, or conspiracy to commit a crime
 21 described in (B) of this paragraph; or

22 (3) leaves the child with another person knowing that the person has
 23 previously physically mistreated or had sexual contact with any child, and the other
 24 person causes physical injury or engages in sexual contact with the child.

25 * **Sec. 7.** AS 11.61 is amended by adding a new section to read:

26 **Sec. 11.61.116. Sending an explicit image of a minor.** (a) A person commits
 27 the offense of sending an explicit image of a minor if the person, with intent to annoy
 28 or humiliate another person, distributes an electronic photograph or video that depicts
 29 the genitals, anus, or female breast of that other person taken when that person was a
 30 minor under 16 years of age.

31 (b) In this section,

1 (1) "computer" has the meaning given in AS 11.46.990;

2 (2) "distributes" means to deliver the image to another person by
3 sending the image to the other person's computer or telephone;

4 (3) "Internet" has the meaning given in AS 11.46.710(d).

5 (c) Sending an explicit image of a minor is

6 (1) a class B misdemeanor if the person distributes the image to
7 another person;

8 (2) a class A misdemeanor if the person distributes the image to an
9 Internet website that is accessible to the public.

10 * **Sec. 8.** AS 11.61.120(a) is amended to read:

11 (a) A person commits the crime of harassment in the second degree if, with
12 intent to harass or annoy another person, that person

13 (1) insults, taunts, or challenges another person in a manner likely to
14 provoke an immediate violent response;

15 (2) telephones another and fails to terminate the connection with intent
16 to impair the ability of that person to place or receive telephone calls;

17 (3) makes repeated telephone calls at extremely inconvenient hours;

18 (4) makes an anonymous or obscene telephone call, an obscene
19 electronic communication, or a telephone call or electronic communication that
20 threatens physical injury or sexual contact;

21 (5) subjects another person to offensive physical contact; or

22 (6) except as provided in AS 11.61.116, publishes or distributes
23 electronic or printed photographs, pictures, or films that show the genitals, anus, or
24 female breast of the other person or show that person engaged in a sexual act.

25 * **Sec. 9.** AS 11.76 is amended by adding new sections to read:

26 **Sec. 11.76.113. Misconduct involving confidential information in the first**
27 **degree.** (a) A person commits the crime of misconduct involving confidential
28 information in the first degree if the person violates AS 11.76.115 and obtains the
29 confidential information with the intent to

30 (1) use the confidential information to commit a crime; or

31 (2) obtain a benefit to which the person is not entitled, to injure another

1 person, or to deprive another person of a benefit.

2 (b) Conviction under this section does not limit a person's ability to obtain
3 civil relief from another person.

4 (c) Misconduct involving confidential information in the first degree is a class
5 A misdemeanor.

6 **Sec. 11.76.115. Misconduct involving confidential information in the**
7 **second degree.** (a) A person commits the crime of misconduct involving confidential
8 information in the second degree if the person, without legal authority or the consent
9 of another person, knowingly obtains confidential information about the other person.

10 (b) In this section, "confidential information" includes

11 (1) information that has been classified confidential by law;

12 (2) information encoded on an access device, identification card issued
13 under AS 18.65.310, or driver's license.

14 (c) Conviction under this section does not limit a person's ability to obtain
15 civil relief from another person.

16 (d) Misconduct involving confidential information in the second degree is a
17 class B misdemeanor.

18 * **Sec. 10.** AS 12.05 is amended by adding a new section to read:

19 **Sec. 12.05.030. Crimes involving minors committed outside state.** In
20 addition to any other jurisdictional basis expressed or implied in law, a person may be
21 prosecuted under the laws of this state for conduct occurring outside the state for a
22 violation of (1) AS 11.41.452 if the other person with whom the defendant
23 communicated was in the state; or (2) AS 11.61.116 if the minor whose image is
24 published or distributed was in the state.

25 * **Sec. 11.** AS 12.25.150(a) is amended to read:

26 (a) A person arrested shall be taken before a judge or magistrate without
27 unnecessary delay, and in any event within 48 [24] hours after arrest, including
28 Sundays and holidays. This requirement applies to municipal police officers to the
29 same extent as it does to state troopers.

30 * **Sec. 12.** AS 12.55.125(i) is amended to read:

31 (i) A defendant convicted of

1 (1) sexual assault in the first degree, sexual abuse of a minor in the
 2 first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2)
 3 may be sentenced to a definite term of imprisonment of not more than 99 years and
 4 shall be sentenced to a definite term within the following presumptive ranges, subject
 5 to adjustment as provided in AS 12.55.155 - 12.55.175:

6 (A) if the offense is a first felony conviction, the offense does
 7 not involve circumstances described in (B) of this paragraph, and the victim
 8 was

9 (i) less than 13 years of age, 25 to 35 years;

10 (ii) 13 years of age or older, 20 to 30 years;

11 (B) if the offense is a first felony conviction and the defendant
 12 possessed a firearm, used a dangerous instrument, or caused serious physical
 13 injury during the commission of the offense, 25 to 35 years;

14 (C) if the offense is a second felony conviction and does not
 15 involve circumstances described in (D) of this paragraph, 30 to 40 years;

16 (D) if the offense is a second felony conviction and the
 17 defendant has a prior conviction for a sexual felony, 35 to 45 years;

18 (E) if the offense is a third felony conviction and the defendant
 19 is not subject to sentencing under (F) of this paragraph or (I) of this section, 40
 20 to 60 years;

21 (F) if the offense is a third felony conviction, the defendant is
 22 not subject to sentencing under (I) of this section, and the defendant has two
 23 prior convictions for sexual felonies, 99 years;

24 (2) attempt, conspiracy, or solicitation to commit sexual assault in the
 25 first degree, sexual abuse of a minor in the first degree, [OR] promoting prostitution in
 26 the first degree under AS 11.66.110(a)(2)), unlawful exploitation of a minor, or
 27 online enticement of a minor under AS 11.41.452(e) may be sentenced to a definite
 28 term of imprisonment of not more than 99 years and shall be sentenced to a definite
 29 term within the following presumptive ranges, subject to adjustment as provided in
 30 AS 12.55.155 - 12.55.175:

31 (A) if the offense is a first felony conviction, the offense does

1 not involve circumstances described in (B) of this paragraph, and the victim
2 was

3 (i) under 13 years of age, 20 to 30 years;

4 (ii) 13 years of age or older, 15 to 30 years;

5 (B) if the offense is a first felony conviction and the defendant
6 possessed a firearm, used a dangerous instrument, or caused serious physical
7 injury during the commission of the offense, 25 to 35 years;

8 (C) if the offense is a second felony conviction and does not
9 involve circumstances described in (D) of this paragraph, 25 to 35 years;

10 (D) if the offense is a second felony conviction and the
11 defendant has a prior conviction for a sexual felony, 30 to 40 years;

12 (E) if the offense is a third felony conviction, the offense does
13 not involve circumstances described in (F) of this paragraph, and the defendant
14 is not subject to sentencing under (I) of this section, 35 to 50 years;

15 (F) if the offense is a third felony conviction, the defendant is
16 not subject to sentencing under (I) of this section, and the defendant has two
17 prior convictions for sexual felonies, 99 years;

18 (3) sexual assault in the second degree, sexual abuse of a minor in the
19 second degree, online enticement of a minor under AS 11.41.452(d) [UNLAWFUL
20 EXPLOITATION OF A MINOR], or distribution of child pornography may be
21 sentenced to a definite term of imprisonment of not more than 99 years and shall be
22 sentenced to a definite term within the following presumptive ranges, subject to
23 adjustment as provided in AS 12.55.155 - 12.55.175:

24 (A) if the offense is a first felony conviction, five to 15 years;

25 (B) if the offense is a second felony conviction and does not
26 involve circumstances described in (C) of this paragraph, 10 to 25 years;

27 (C) if the offense is a second felony conviction and the
28 defendant has a prior conviction for a sexual felony, 15 to 30 years;

29 (D) if the offense is a third felony conviction and does not
30 involve circumstances described in (E) of this paragraph, 20 to 35 years;

31 (E) if the offense is a third felony conviction and the defendant

1 has two prior convictions for sexual felonies, 99 years;

2 (4) sexual assault in the third degree, incest, indecent exposure in the
3 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
4 commit sexual assault in the second degree, sexual abuse of a minor in the second
5 degree, [UNLAWFUL EXPLOITATION OF A MINOR,] or distribution of child
6 pornography, may be sentenced to a definite term of imprisonment of not more than
7 99 years and shall be sentenced to a definite term within the following presumptive
8 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

9 (A) if the offense is a first felony conviction, two to 12 years;

10 (B) if the offense is a second felony conviction and does not
11 involve circumstances described in (C) of this paragraph, eight to 15 years;

12 (C) if the offense is a second felony conviction and the
13 defendant has a prior conviction for a sexual felony, 12 to 20 years;

14 (D) if the offense is a third felony conviction and does not
15 involve circumstances described in (E) of this paragraph, 15 to 25 years;

16 (E) if the offense is a third felony conviction and the defendant
17 has two prior convictions for sexual felonies, 99 years.

18 * **Sec. 13.** AS 12.70.130 is amended to read:

19 **Sec. 12.70.130. Arrest without warrant.** The arrest of a person may also be
20 lawfully made by a peace officer or a private person without a warrant upon
21 reasonable information that the accused stands charged in the courts of another state
22 with a crime punishable by death or imprisonment for a term exceeding one year, but
23 when arrested the accused must be taken before a judge or magistrate without
24 unnecessary delay and, in any event, within 48 [24] hours after arrest, including
25 Sundays and holidays, and complaint shall be made against the accused under oath
26 setting out the ground for the arrest as in AS 12.70.120. Thereafter the answer of the
27 accused shall be heard as if the accused had been arrested on a warrant.

28 * **Sec. 14.** AS 28.15.131 is amended by adding a new subsection to read:

29 (b) Violation of this section is an infraction.

30 * **Sec. 15.** AS 28.22.019(c) is amended to read:

31 (c) A person convicted under this section is guilty of an infraction [A CLASS

1 B MISDEMEANOR] and shall be sentenced to pay a mandatory fine of \$500
2 [MAY BE PUNISHED AS PROVIDED IN AS 12.55, EXCEPT THAT A FINE OF
3 AT LEAST \$500 MUST BE IMPOSED].

4 * **Sec. 16.** AS 33.05.020(a) is repealed and reenacted to read:

5 (a) The commissioner shall appoint and make available to the superior court,
6 when ordered under AS 12.55.015(a), a qualified probation officer for the active
7 supervision of a person placed on probation for a felony offense. The commissioner
8 may provide active supervision to a person placed on probation for a misdemeanor
9 offense.

10 * **Sec. 17.** AS 41.23.220 is amended to read:

11 **Sec. 41.23.220. Penalty.** (a) Except for conduct that is a violation of
12 AS 11.46.420, a [A] person who violates a provision of AS 41.23.180 - 41.23.230 or a
13 regulation adopted under AS 41.23.180 - 41.23.230 is guilty of a violation as defined
14 in AS 11.81.900.

15 (b) Except for conduct that is a violation of AS 11.46.420, the [THE]
16 supreme court shall establish by order or rule a schedule of bail amounts for violations
17 under (a) of this section that allow the disposition of a citation without a court
18 appearance.

19 * **Sec. 18.** AS 44.23.080 is repealed and reenacted to read:

20 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
21 **of an Internet service account.** (a) If there is reasonable cause to believe that an
22 Internet service account has been used in connection with a violation of AS 11.41.452,
23 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other
24 information about the account owner will assist in obtaining evidence that is relevant
25 to the offense, a law enforcement officer may apply to the attorney general or the
26 attorney general's designee for an administrative subpoena to obtain the business
27 records of the Internet service provider located inside or outside of the state.

28 (b) If an application meets the requirements of (a) of this section, the attorney
29 general or the attorney general's designee may issue an administrative subpoena to the
30 Internet service provider requiring the production of the following records:

31 (1) the name and other identifying information of the account holder;

1 (2) the address and physical location associated with the account;

2 (3) a description of the length of service, service start date, and types
3 of service associated with the account.

4 (c) A subpoena issued under (b) of this section must prescribe a reasonable
5 time after service for the production of the information.

6 (d) Service of a subpoena issued under (b) of this section may be by any
7 method authorized by law or acceptable to the Internet service provider. At any time
8 before the return date specified on the subpoena, the Internet service provider may
9 petition a court of competent jurisdiction for the judicial district in which the provider
10 resides or does business for an order modifying or quashing the subpoena or for an
11 order sealing the court record.

12 (e) If the Internet service provider refuses to obey a subpoena issued under (b)
13 of this section, the superior court may, upon application of the attorney general or the
14 attorney general's designee, issue an order requiring the Internet service provider to
15 appear at the office of the attorney general with the information described in the
16 subpoena.

17 (f) An Internet service provider who knowingly fails to produce the
18 information required to be produced by the subpoena or court order is guilty of
19 contempt under AS 09.50.010.

20 (g) Nothing in this section limits the authority of law enforcement from
21 obtaining process from the court or through a grand jury subpoena to obtain the
22 information described in (b) of this section.

23 (h) A person may not bring a civil action against an Internet service provider,
24 its officers, employees, agents, or other person for complying with an administrative
25 subpoena issued under (b) of this section or a court order issued under (e) of this
26 section.

27 (i) For purposes of this section, the attorney general's designee must be in the
28 Department of Law.

29 * **Sec. 19.** AS 47.12.030(a) is amended to read:

30 (a) When a minor who was at least 16 years of age at the time of the offense is
31 charged by complaint, information, or indictment with an offense specified in this

1 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
 2 for which the minor is charged or to any additional offenses joinable to it under the
 3 applicable rules of court governing criminal procedure. The minor shall be charged,
 4 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
 5 an adult. If the minor is convicted of an offense other than an offense specified in this
 6 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
 7 the minor is amenable to treatment under this chapter. If the court finds that the minor
 8 is amenable to treatment under this chapter, the minor shall be treated as though the
 9 charges had been heard under this chapter, and the court shall order disposition of the
 10 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
 11 subsection apply when the minor is charged by complaint, information, or indictment
 12 with an offense

13 (1) that is an unclassified felony or a class A felony and the felony is a
 14 crime against a person, **other than a violation of AS 11.41.455**;

15 (2) of arson in the first degree;

16 (3) that is a class B felony and the felony is a crime against a person in
 17 which the minor is alleged to have used a deadly weapon in the commission of the
 18 offense and the minor was previously adjudicated as a delinquent or convicted as an
 19 adult, in this or another jurisdiction, as a result of an offense that involved use of a
 20 deadly weapon in the commission of a crime against a person or an offense in another
 21 jurisdiction having elements substantially identical to those of a crime against a
 22 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
 23 weapon" has the meaning given in AS 11.81.900(b); or

24 (4) that is misconduct involving weapons in the first degree under

25 (A) AS 11.61.190(a)(1); or

26 (B) AS 11.61.190(a)(2) when the firearm was discharged under
 27 circumstances manifesting substantial and unjustifiable risk of physical injury
 28 to a person.

29 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of

1 Criminal Procedure, is amended to read:

2 (1) Except when the person arrested is issued a citation for a
3 misdemeanor or a violation and immediately thereafter released, the arrested person
4 shall be taken before the nearest available judge or magistrate without unnecessary
5 delay and in any event within 48 hours after arrest, including Sundays and
6 holidays. This appearance may be accomplished by the use of telephonic or television
7 equipment pursuant to Criminal Rules 38.1 and 38.2. [NECESSARY DELAY
8 WITHIN THE MEANING OF THIS PARAGRAPH (a) IS DEFINED AS A PERIOD
9 NOT TO EXCEED FORTY-EIGHT HOURS AFTER ARREST, INCLUDING
10 SUNDAYS AND HOLIDAYS.]

11 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 INDIRECT COURT RULE AMENDMENT. The amendments to AS 41.23.220, made
14 in sec. 17 of this Act, have the effect of changing Rule 43.10, Alaska Rules of Administration,
15 by prohibiting the disposition of a violation of AS 11.46.420 without court appearance and
16 forfeiture of bail amounts.

17 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. (a) Sections 11, 13, and 20 of this Act apply to arrests for offenses
20 committed before, on, or after the effective date of this Act.

21 (b) Sections 1 - 10, 12, 14, 15, 17, 19, and 21 of this Act apply to offenses committed
22 on or after the effective date of this Act.

23 (c) Sections 16 and 18 of this Act apply to offenses occurring before, on, or after the
24 effective date of this Act.

25 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
28 of it to any person or circumstance, is held invalid, the remainder of this Act and the
29 application to other persons or circumstances is not affected.

30 * **Sec. 24.** This Act takes effect July 1, 2011.

Not Offered

27-LS0579\M.1

~~Gardner~~
3/29/11

GARA

Conceptual

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 175(JUD)
127(FIN)

1 Page 1, following line 6:

2 Insert a new bill section to read:

3 **** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 LEGISLATIVE INTENT. While the amendments to AS 12.25.150(a) in sec. 2 of this
6 Act and AS 12.70.130 in sec. 3 of this Act provide that an arrested person shall be taken
7 before a judge or magistrate within 48 hours after arrest, including Sundays and holidays, it is
8 the intent of the legislature that law enforcement officers, the Alaska Court System, and
9 prosecutors, except where ~~impracticable~~ ^{impractical}, undertake reasonable measures to take an arrested
10 person before a judge or magistrate within 24 hours of arrest."
11

12 Renumber ~~the following~~ bill sections accordingly.
13

14 Page 3, line 10:

15 Delete "sec. 5"

16 Insert "sec. 6"

17

18 Page 3, line 15:

19 Delete "Sections 1 - 4"

20 Insert "Sections 2 - 5"

21

22 Page 3, line 17:

23 Delete "Sections 5 - 7"

2011 HOUSE FINANCE COMMITTEE VOTE SHEET

Failed

DATE: 4/1/11

Amendment: #1 HB 127

MEMBER	Favor	Oppose
REP. NEUMAN <i>Hawker</i>		✓
REP. WILSON		✓
REP. COSTELLO		✓
REP. DOOGAN	✓	
REP. EDGMON	✓	
REP. FAIRCLOUGH		✓
REP. GARA	✓	
REP. GUTTENBERG	✓	
REP. JOULE <i>Rep Jowle</i>		✓
REP. STOLTZE		✓
REP. THOMAS		✓

YEA 4

NAY 7

Failed

AMENDMENT #1 by Rep. Gara

OFFERED IN THE HOUSE

TO: CSHB 127(FIN), Draft Version "I"

1 Page 1, following line 10:

2 Insert a new bill section to read:

3 "* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 LEGISLATIVE INTENT. While the amendments to AS 12.25.150(a) in sec. 11 of this
6 Act and AS 12.70.130 in sec. 13 of this Act provide that an arrested person shall be taken
7 before a judge or magistrate within 48 hours after arrest, including Sundays and holidays, it is
8 the intent of the legislature that law enforcement officers, the Alaska Court System, and
9 prosecutors, except where ^{impractical} impracticable, undertake reasonable measures to take an arrested
10 person before a judge or magistrate within 24 hours after arrest."
11

12 Page 1, line 11:

13 Delete "**Section 1**"

14 Insert "**Sec. 2**"

15
16 Renumber the following bill sections accordingly.

17
18 Page 12, line 14:

19 Delete "sec. 17"

20 Insert "sec. 18"

21
22 Page 12, line 19:

23 Delete "Sections 11, 13, and 20"

1 Insert "Sections 1, 12, 14, and 21"

2

3 Page 12, line 21:

4 Delete "Sections 1 - 10, 12, 14, 15, 17, 19, and 21"

5 Insert "Sections 2 - 11, 13, 15, 16, 18, 20, and 22"

6

7 Page 12, line 23:

8 Delete "Sections 16 and 18"

9 Insert "Sections 17 and 19"

*Adopted
3/31/11*

27-GH1840I
Gardner
3/18/11

CS FOR HOUSE BILL NO. 127(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of stalking, online enticement of a minor, unlawful**
2 **exploitation of a minor, endangering the welfare of a child, sending an explicit image of**
3 **a minor, harassment, and misconduct involving confidential information; relating to**
4 **probation; relating to the subpoena power of the attorney general in cases involving use**
5 **of an Internet service account; relating to an appearance before a judicial officer after**
6 **arrest; relating to penalties for operating a vehicle without possessing proof of motor**
7 **vehicle liability insurance or a driver's license; relating to penalties for certain arson**
8 **offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10,**
9 **Alaska Rules of Administration; and providing for an effective date."**

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

11 *** Section 1.** AS 11.41.270(b)(3) is amended to read:

12 (3) "nonconsensual contact" means any contact with another person

1 that is initiated or continued without that person's consent, that is beyond the scope of
2 the consent provided by that person, or that is in disregard of that person's expressed
3 desire that the contact be avoided or discontinued; "nonconsensual contact" includes

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

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

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

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

10 (E) contacting that person by telephone;

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

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

14 (H) following or monitoring that person with a global
15 positioning device or similar technological means;

16 (I) using, installing, or attempting to use or install a device
17 for observing, recording, or photographing events occurring in the
18 residence, vehicle, or workplace used by that person, or on the personal
19 telephone or computer used by that person;

20 * **Sec. 2.** AS 11.41.270(b) is amended by adding a new paragraph to read:

21 (5) "device" includes software.

22 * **Sec. 3.** AS 11.41.452(d) is amended to read:

23 (d) Except as provided in (e) of this section, online enticement is a class **B** [C]
24 felony.

25 * **Sec. 4.** AS 11.41.452(e) is amended to read:

26 (e) Online enticement is a class **A** [B] felony if the defendant was, at the time
27 of the offense, required to register as a sex offender or child kidnapper under AS 12.63
28 or a similar law of another jurisdiction.

29 * **Sec. 5.** AS 11.41.455(c) is amended to read:

30 (c) Unlawful exploitation of a minor is a
31 [(1)] class **A** [B] felony [; OR

1 (2) CLASS A FELONY IF THE PERSON HAS BEEN
2 PREVIOUSLY CONVICTED OF UNLAWFUL EXPLOITATION OF A MINOR IN
3 THIS JURISDICTION OR A SIMILAR CRIME IN THIS OR ANOTHER
4 JURISDICTION].

5 * **Sec. 6.** AS 11.51.100(a) is amended to read:

6 (a) A person commits the crime of endangering the welfare of a child in the
7 first degree if, being a parent, guardian, or other person legally charged with the care
8 of a child under 16 years of age, the person

9 (1) intentionally deserts the child in a place under circumstances
10 creating a substantial risk of physical injury to the child;

11 (2) leaves the child with another person who is not a parent, guardian,
12 or lawful custodian of the child knowing that the person **is**

13 (A) [IS] registered or required to register as a sex offender **or**
14 **child kidnapper** under AS 12.63 or a law or ordinance in another jurisdiction
15 with similar requirements;

16 (B) [HAS BEEN] charged by complaint, information, or
17 indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance
18 in another jurisdiction with similar elements; or

19 (C) [HAS BEEN] charged by complaint, information, or
20 indictment with an attempt, solicitation, or conspiracy to commit a crime
21 described in (B) of this paragraph; or

22 (3) leaves the child with another person knowing that the person has
23 previously physically mistreated or had sexual contact with any child, and the other
24 person causes physical injury or engages in sexual contact with the child.

25 * **Sec. 7.** AS 11.61 is amended by adding a new section to read:

26 **Sec. 11.61.116. Sending an explicit image of a minor.** (a) A person commits
27 the offense of sending an explicit image of a minor if the person, with intent to annoy
28 or humiliate another person, distributes an electronic photograph or video that depicts
29 the genitals, anus, or female breast of that other person taken when that person was a
30 minor under 16 years of age.

31 (b) In this section,

1 (1) "computer" has the meaning given in AS 11.46.990;

2 (2) "distributes" means to deliver the image to another person by
3 sending the image to the other person's computer or telephone;

4 (3) "Internet" has the meaning given in AS 11.46.710(d).

5 (c) Sending an explicit image of a minor is

6 (1) a class B misdemeanor if the person distributes the image to
7 another person;

8 (2) a class A misdemeanor if the person distributes the image to an
9 Internet website that is accessible to the public.

10 * **Sec. 8.** AS 11.61.120(a) is amended to read:

11 (a) A person commits the crime of harassment in the second degree if, with
12 intent to harass or annoy another person, that person

13 (1) insults, taunts, or challenges another person in a manner likely to
14 provoke an immediate violent response;

15 (2) telephones another and fails to terminate the connection with intent
16 to impair the ability of that person to place or receive telephone calls;

17 (3) makes repeated telephone calls at extremely inconvenient hours;

18 (4) makes an anonymous or obscene telephone call, an obscene
19 electronic communication, or a telephone call or electronic communication that
20 threatens physical injury or sexual contact;

21 (5) subjects another person to offensive physical contact; or

22 (6) **except as provided in AS 11.61.116**, publishes or distributes
23 electronic or printed photographs, pictures, or films that show the genitals, anus, or
24 female breast of the other person or show that person engaged in a sexual act.

25 * **Sec. 9.** AS 11.76 is amended by adding new sections to read:

26 **Sec. 11.76.113. Misconduct involving confidential information in the first**
27 **degree.** (a) A person commits the crime of misconduct involving confidential
28 information in the first degree if the person violates AS 11.76.115 and obtains the
29 confidential information with the intent to

30 (1) use the confidential information to commit a crime; or

31 (2) obtain a benefit to which the person is not entitled, to injure another

1 person, or to deprive another person of a benefit.

2 (b) Conviction under this section does not limit a person's ability to obtain
3 civil relief from another person.

4 (c) Misconduct involving confidential information in the first degree is a class
5 A misdemeanor.

6 **Sec. 11.76.115. Misconduct involving confidential information in the**
7 **second degree.** (a) A person commits the crime of misconduct involving confidential
8 information in the second degree if the person, without legal authority or the consent
9 of another person, knowingly obtains confidential information about the other person.

10 (b) In this section, "confidential information" includes

11 (1) information that has been classified confidential by law;

12 (2) information encoded on an access device, identification card issued
13 under AS 18.65.310, or driver's license.

14 (c) Conviction under this section does not limit a person's ability to obtain
15 civil relief from another person.

16 (d) Misconduct involving confidential information in the second degree is a
17 class B misdemeanor.

18 * **Sec. 10.** AS 12.05 is amended by adding a new section to read:

19 **Sec. 12.05.030. Crimes involving minors committed outside state.** In
20 addition to any other jurisdictional basis expressed or implied in law, a person may be
21 prosecuted under the laws of this state for conduct occurring outside the state for a
22 violation of (1) AS 11.41.452 if the other person with whom the defendant
23 communicated was in the state; or (2) AS 11.61.116 if the minor whose image is
24 published or distributed was in the state.

25 * **Sec. 11.** AS 12.25.150(a) is amended to read:

26 (a) A person arrested shall be taken before a judge or magistrate without
27 unnecessary delay, and in any event within 48 [24] hours after arrest, including
28 Sundays and holidays. This requirement applies to municipal police officers to the
29 same extent as it does to state troopers.

30 * **Sec. 12.** AS 12.55.125(i) is amended to read:

31 (i) A defendant convicted of

1 (1) sexual assault in the first degree, sexual abuse of a minor in the
2 first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2)
3 may be sentenced to a definite term of imprisonment of not more than 99 years and
4 shall be sentenced to a definite term within the following presumptive ranges, subject
5 to adjustment as provided in AS 12.55.155 - 12.55.175:

6 (A) if the offense is a first felony conviction, the offense does
7 not involve circumstances described in (B) of this paragraph, and the victim
8 was

9 (i) less than 13 years of age, 25 to 35 years;

10 (ii) 13 years of age or older, 20 to 30 years;

11 (B) if the offense is a first felony conviction and the defendant
12 possessed a firearm, used a dangerous instrument, or caused serious physical
13 injury during the commission of the offense, 25 to 35 years;

14 (C) if the offense is a second felony conviction and does not
15 involve circumstances described in (D) of this paragraph, 30 to 40 years;

16 (D) if the offense is a second felony conviction and the
17 defendant has a prior conviction for a sexual felony, 35 to 45 years;

18 (E) if the offense is a third felony conviction and the defendant
19 is not subject to sentencing under (F) of this paragraph or (I) of this section, 40
20 to 60 years;

21 (F) if the offense is a third felony conviction, the defendant is
22 not subject to sentencing under (I) of this section, and the defendant has two
23 prior convictions for sexual felonies, 99 years;

24 (2) attempt, conspiracy, or solicitation to commit sexual assault in the
25 first degree, sexual abuse of a minor in the first degree, [OR] promoting prostitution in
26 the first degree under AS 11.66.110(a)(2)), **unlawful exploitation of a minor. or**
27 **online enticement of a minor under AS 11.41.452(e)** may be sentenced to a definite
28 term of imprisonment of not more than 99 years and shall be sentenced to a definite
29 term within the following presumptive ranges, subject to adjustment as provided in
30 AS 12.55.155 - 12.55.175:

31 (A) if the offense is a first felony conviction, the offense does

1 not involve circumstances described in (B) of this paragraph, and the victim
2 was

3 (i) under 13 years of age, 20 to 30 years;

4 (ii) 13 years of age or older, 15 to 30 years;

5 (B) if the offense is a first felony conviction and the defendant
6 possessed a firearm, used a dangerous instrument, or caused serious physical
7 injury during the commission of the offense, 25 to 35 years;

8 (C) if the offense is a second felony conviction and does not
9 involve circumstances described in (D) of this paragraph, 25 to 35 years;

10 (D) if the offense is a second felony conviction and the
11 defendant has a prior conviction for a sexual felony, 30 to 40 years;

12 (E) if the offense is a third felony conviction, the offense does
13 not involve circumstances described in (F) of this paragraph, and the defendant
14 is not subject to sentencing under (I) of this section, 35 to 50 years;

15 (F) if the offense is a third felony conviction, the defendant is
16 not subject to sentencing under (I) of this section, and the defendant has two
17 prior convictions for sexual felonies, 99 years;

18 (3) sexual assault in the second degree, sexual abuse of a minor in the
19 second degree, online enticement of a minor under AS 11.41.452(d) [UNLAWFUL
20 EXPLOITATION OF A MINOR], or distribution of child pornography may be
21 sentenced to a definite term of imprisonment of not more than 99 years and shall be
22 sentenced to a definite term within the following presumptive ranges, subject to
23 adjustment as provided in AS 12.55.155 - 12.55.175:

24 (A) if the offense is a first felony conviction, five to 15 years;

25 (B) if the offense is a second felony conviction and does not
26 involve circumstances described in (C) of this paragraph, 10 to 25 years;

27 (C) if the offense is a second felony conviction and the
28 defendant has a prior conviction for a sexual felony, 15 to 30 years;

29 (D) if the offense is a third felony conviction and does not
30 involve circumstances described in (E) of this paragraph, 20 to 35 years;

31 (E) if the offense is a third felony conviction and the defendant

1 has two prior convictions for sexual felonies, 99 years;

2 (4) sexual assault in the third degree, incest, indecent exposure in the
3 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
4 commit sexual assault in the second degree, sexual abuse of a minor in the second
5 degree, [UNLAWFUL EXPLOITATION OF A MINOR,] or distribution of child
6 pornography, may be sentenced to a definite term of imprisonment of not more than
7 99 years and shall be sentenced to a definite term within the following presumptive
8 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

9 (A) if the offense is a first felony conviction, two to 12 years;

10 (B) if the offense is a second felony conviction and does not
11 involve circumstances described in (C) of this paragraph, eight to 15 years;

12 (C) if the offense is a second felony conviction and the
13 defendant has a prior conviction for a sexual felony, 12 to 20 years;

14 (D) if the offense is a third felony conviction and does not
15 involve circumstances described in (E) of this paragraph, 15 to 25 years;

16 (E) if the offense is a third felony conviction and the defendant
17 has two prior convictions for sexual felonies, 99 years.

18 * **Sec. 13.** AS 12.70.130 is amended to read:

19 **Sec. 12.70.130. Arrest without warrant.** The arrest of a person may also be
20 lawfully made by a peace officer or a private person without a warrant upon
21 reasonable information that the accused stands charged in the courts of another state
22 with a crime punishable by death or imprisonment for a term exceeding one year, but
23 when arrested the accused must be taken before a judge or magistrate without
24 unnecessary delay and, in any event, within 48 [24] hours after arrest, including
25 Sundays and holidays, and complaint shall be made against the accused under oath
26 setting out the ground for the arrest as in AS 12.70.120. Thereafter the answer of the
27 accused shall be heard as if the accused had been arrested on a warrant.

28 * **Sec. 14.** AS 28.15.131 is amended by adding a new subsection to read:

29 (b) Violation of this section is an infraction.

30 * **Sec. 15.** AS 28.22.019(c) is amended to read:

31 (c) A person convicted under this section is guilty of an infraction [A CLASS

1 B MISDEMEANOR] and shall be sentenced to pay a mandatory fine of \$500
2 [MAY BE PUNISHED AS PROVIDED IN AS 12.55, EXCEPT THAT A FINE OF
3 AT LEAST \$500 MUST BE IMPOSED].

4 * **Sec. 16.** AS 33.05.020(a) is repealed and reenacted to read:

5 (a) The commissioner shall appoint and make available to the superior court,
6 when ordered under AS 12.55.015(a), a qualified probation officer for the active
7 supervision of a person placed on probation for a felony offense. The commissioner
8 may provide active supervision to a person placed on probation for a misdemeanor
9 offense.

10 * **Sec. 17.** AS 41.23.220 is amended to read:

11 **Sec. 41.23.220. Penalty.** (a) Except for conduct that is a violation of
12 AS 11.46.420, a [A] person who violates a provision of AS 41.23.180 - 41.23.230 or a
13 regulation adopted under AS 41.23.180 - 41.23.230 is guilty of a violation as defined
14 in AS 11.81.900.

15 (b) Except for conduct that is a violation of AS 11.46.420, the [THE]
16 supreme court shall establish by order or rule a schedule of bail amounts for violations
17 under (a) of this section that allow the disposition of a citation without a court
18 appearance.

19 * **Sec. 18.** AS 44.23.080 is repealed and reenacted to read:

20 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
21 **of an Internet service account.** (a) If there is reasonable cause to believe that an
22 Internet service account has been used in connection with a violation of AS 11.41.452,
23 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other
24 information about the account owner will assist in obtaining evidence that is relevant
25 to the offense, a law enforcement officer may apply to the attorney general or the
26 attorney general's designee for an administrative subpoena to obtain the business
27 records of the Internet service provider located inside or outside of the state.

28 (b) If an application meets the requirements of (a) of this section, the attorney
29 general or the attorney general's designee may issue an administrative subpoena to the
30 Internet service provider requiring the production of the following records:

31 (1) the name and other identifying information of the account holder;

1 (2) the address and physical location associated with the account;

2 (3) a description of the length of service, service start date, and types
3 of service associated with the account.

4 (c) A subpoena issued under (b) of this section must prescribe a reasonable
5 time after service for the production of the information.

6 (d) Service of a subpoena issued under (b) of this section may be by any
7 method authorized by law or acceptable to the Internet service provider. At any time
8 before the return date specified on the subpoena, the Internet service provider may
9 petition a court of competent jurisdiction for the judicial district in which the provider
10 resides or does business for an order modifying or quashing the subpoena or for an
11 order sealing the court record.

12 (e) If the Internet service provider refuses to obey a subpoena issued under (b)
13 of this section, the superior court may, upon application of the attorney general or the
14 attorney general's designee, issue an order requiring the Internet service provider to
15 appear at the office of the attorney general with the information described in the
16 subpoena.

17 (f) An Internet service provider who knowingly fails to produce the
18 information required to be produced by the subpoena or court order is guilty of
19 contempt under AS 09.50.010.

20 (g) Nothing in this section limits the authority of law enforcement from
21 obtaining process from the court or through a grand jury subpoena to obtain the
22 information described in (b) of this section.

23 (h) A person may not bring a civil action against an Internet service provider,
24 its officers, employees, agents, or other person for complying with an administrative
25 subpoena issued under (b) of this section or a court order issued under (e) of this
26 section.

27 (i) For purposes of this section, the attorney general's designee must be in the
28 Department of Law.

29 * **Sec. 19.** AS 47.12.030(a) is amended to read:

30 (a) When a minor who was at least 16 years of age at the time of the offense is
31 charged by complaint, information, or indictment with an offense specified in this

1 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
2 for which the minor is charged or to any additional offenses joinable to it under the
3 applicable rules of court governing criminal procedure. The minor shall be charged,
4 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
5 an adult. If the minor is convicted of an offense other than an offense specified in this
6 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
7 the minor is amenable to treatment under this chapter. If the court finds that the minor
8 is amenable to treatment under this chapter, the minor shall be treated as though the
9 charges had been heard under this chapter, and the court shall order disposition of the
10 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
11 subsection apply when the minor is charged by complaint, information, or indictment
12 with an offense

13 (1) that is an unclassified felony or a class A felony and the felony is a
14 crime against a person, other than a violation of AS 11.41.455;

15 (2) of arson in the first degree;

16 (3) that is a class B felony and the felony is a crime against a person in
17 which the minor is alleged to have used a deadly weapon in the commission of the
18 offense and the minor was previously adjudicated as a delinquent or convicted as an
19 adult, in this or another jurisdiction, as a result of an offense that involved use of a
20 deadly weapon in the commission of a crime against a person or an offense in another
21 jurisdiction having elements substantially identical to those of a crime against a
22 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
23 weapon" has the meaning given in AS 11.81.900(b); or

24 (4) that is misconduct involving weapons in the first degree under

25 (A) AS 11.61.190(a)(1); or

26 (B) AS 11.61.190(a)(2) when the firearm was discharged under
27 circumstances manifesting substantial and unjustifiable risk of physical injury
28 to a person.

29 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of

1 Criminal Procedure, is amended to read:

2 (1) Except when the person arrested is issued a citation for a
3 misdemeanor or a violation and immediately thereafter released, the arrested person
4 shall be taken before the nearest available judge or magistrate without unnecessary
5 delay and in any event within 48 hours after arrest, including Sundays and
6 holidays. This appearance may be accomplished by the use of telephonic or television
7 equipment pursuant to Criminal Rules 38.1 and 38.2. [NECESSARY DELAY
8 WITHIN THE MEANING OF THIS PARAGRAPH (a) IS DEFINED AS A PERIOD
9 NOT TO EXCEED FORTY-EIGHT HOURS AFTER ARREST, INCLUDING
10 SUNDAYS AND HOLIDAYS.]

11 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 INDIRECT COURT RULE AMENDMENT. The amendments to AS 41.23.220, made
14 in sec. 17 of this Act, have the effect of changing Rule 43.10, Alaska Rules of Administration,
15 by prohibiting the disposition of a violation of AS 11.46.420 without court appearance and
16 forfeiture of bail amounts.

17 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. (a) Sections 11, 13, and 20 of this Act apply to arrests for offenses
20 committed before, on, or after the effective date of this Act.

21 (b) Sections 1 - 10, 12, 14, 15, 17, 19, and 21 of this Act apply to offenses committed
22 on or after the effective date of this Act.

23 (c) Sections 16 and 18 of this Act apply to offenses occurring before, on, or after the
24 effective date of this Act.

25 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
28 of it to any person or circumstance, is held invalid, the remainder of this Act and the
29 application to other persons or circumstances is not affected.

30 * **Sec. 24.** This Act takes effect July 1, 2011.

Westlaw

AS § 06.55.407

Page 1

West's Alaska Statutes Annotated Currentness

Title 6. Banks and Financial Institutions

Chapter 55. Alaska Uniform Money Services Act. (Refs & Annos)

Article 4. Examinations, Reports, Records

→ § 06.55.407. Confidentiality

(a) Except as otherwise provided in (b) of this section, all **information** or reports obtained by the department from an applicant, a licensee, or an authorized delegate are **confidential** and not subject to disclosure under AS 40.25.100--40.25.295, including

(1) all **information** contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the department; and

(2) financial statements, balance sheets, and authorized delegate **information**.

(b) The department may disclose **information** that is not otherwise subject to disclosure under (a) of this section to representatives of state or federal agencies who promise in a record that they will maintain the **confidentiality** of the **information** or if the department finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the money services licensee has been given previous notice by the department of its intent to release the **information**.

(c) This section does not prohibit the department from disclosing to the public a list of money services licensees or the aggregated financial data concerning those money services licensees.

(d) A money services licensee or an authorized delegate may not disclose to another person financial **information** provided to the money services licensee or the authorized delegate by a customer except when, and only to the extent that, the disclosure is

(1) authorized in writing by the customer;

(2) required by federal, state, or local law;

(3) required by an order issued by a court or an administrative agency; or

(4) part of the money services transaction ordered by the customer.

(e) In (d) of this section, "financial **information**" means an individual's social security number, individual tax-

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AS § 06.55.407

Page 2

payer identification number, account number, credit card account number, debit card account number, personal identification number, payment instrument number, or access code.

CREDIT(S)

Added by SLA 2007, ch. 55, § 1, eff. July 1, 2008. Amended by SLA 2010, ch. 58, § 2, eff. June 10, 2010.

HISTORICAL AND STATUTORY NOTES

SLA 2007, ch. 55, § 2 provides:

“APPLICABILITY. This Act applies to the provision of money services on or after July 1, 2008.”

AS § 06.55.407, AK ST § 06.55.407

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West's Alaska Statutes Annotated Currentness
Title 10. Corporations and Associations
 Chapter 13. Alaska BIDCO Act
 Article 8. General Provisions
 → § 10.13.930. Confidentiality

(a) The commissioner, deputies, and other employees of the department may not disclose **information** acquired by them in the discharge of their duties under this chapter except to the extent disclosure of the **information** is required by law, other than the public records provisions of AS 40.25.110 - 40.25.220, or is required by court order.

(b) Notwithstanding (a) of this section, the department may disclose **information** that is **confidential** under (a) of this section if the department determines that disclosure of the **information** is necessary to promote the public interest. This subsection does not authorize the disclosure of **information** acquired by the department in the course of an examination of a licensee.

(c) Notwithstanding (a) of this section, the department may furnish **information** that is **confidential** under (a) of this section to the Alaska Industrial Development and Export Authority if the **information** is related to a BIDCO that has received assistance under former AS 37.17.200--37.17.390.

(d) A BIDCO may provide to a current or prospective creditor or shareholder of the BIDCO a copy of an examination report on the BIDCO made by the department under this chapter.

CREDIT(S)

SLA 1992, ch. 133, § 1; SLA 2004, ch. 2, § 3.

AS § 10.13.930, AK ST § 10.13.930

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Westlaw.

AS § 11.56.860

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 11. Criminal Law

Chapter 56. Offenses Against Public Administration

Article 6. Abuse of Public Office

→ § 11.56.860. Misuse of confidential information

(a) A person who is or has been a public servant commits the crime of misuse of **confidential information** if the person

(1) learns **confidential information** through employment as a public servant; and

(2) while in office or after leaving office, uses the **confidential information** for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "**confidential information**" means **information** which has been classified **confidential** by law.

(c) Misuse of **confidential information** is a class A misdemeanor.

CREDIT(S)

SLA 1978, ch. 166, § 6.

CROSS REFERENCES

Attempt, classification of offenses, see § 11.31.100.

Classification of offenses, see § 11.81.250.

Fines, see § 12.55.035.

Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.

Misdemeanors, sentences of imprisonment, see § 12.55.135.

Offenses defined by statute, see § 11.81.220.

Prior convictions, effect on sentencing, see § 12.55.145.

Restitution and compensation, see § 12.55.045.


Victims of crimes, rights, see § 12.61.010 et seq.

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AS § 11.56.860

Page 2

Officers and Public Employees  121.
Westlaw Key Number Search: 283k121.
C.J.S. Officers and Public Employees §§ 329 to 334.

AS § 11.56.860, AK ST § 11.56.860

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Westlaw

AS § 12.62.160

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 12. Code of Criminal Procedure

Chapter 62. Criminal Justice Information and Records Check

Article 1. Criminal Justice Information

→ § 12.62.160. Release and use of criminal justice information; fees

(a) Criminal justice information and the identity of recipients of criminal justice information are confidential and exempt from disclosure under AS 40.25. The existence or nonexistence of criminal justice information may not be released to or confirmed to any person except as provided in this section and AS 12.62.180(d).

(b) Subject to the requirements of this section, and except as otherwise limited or prohibited by other provision of law or court rule, criminal justice information

(1) may be provided to a person when, and only to the extent, necessary to avoid imminent danger to life or extensive damage to property;

(2) may be provided to a person to the extent required by applicable court rules or under an order of a court of this state, another state, or the United States;

(3) may be provided to a person if the information is commonly or traditionally provided by criminal justice agencies in order to identify, locate, or apprehend fugitives or wanted persons or to recover stolen property, or for public reporting of recent arrests, charges, and other criminal justice activity;

(4) may be provided to a criminal justice agency for a criminal justice activity;

(5) may be provided to a government agency when necessary for enforcement of or for a purpose specifically authorized by state or federal law;

(6) may be provided to a person specifically authorized by a state or federal law to receive that information;

(7) in aggregate form may be released to a qualified person, as determined by the agency, for criminal justice research, subject to written conditions that assure the security of the information and the privacy of individuals to whom the information relates;

(8) may be provided to a person for any purpose, except that information may not be released if the informa-

tion is nonconviction information or correctional treatment information;

(9) including information relating to a serious offense, may be provided to an interested person if the information is requested for the purpose of determining whether to grant a person supervisory or disciplinary power over a minor or dependent adult; and

(10) may be provided to the person who is the subject of the information.

(c) Unless otherwise provided for in regulations adopted by the commissioner, if access to criminal justice information is permitted under (b) of this section

(1) the information may be released only by the agency maintaining that information;

(2) the information may not be released under this section without first determining that the information is the most current information available within that criminal justice information system, unless the system is incapable of providing the most current information available within the necessary time period;

(3) the information may not be released under this section until the person requesting the information establishes the identity of the subject of the information by fingerprint comparison or another reliable means of identification approved by the department;

(4) the information may not be released under this section unless the criminal justice agency releasing the information records, and maintains for at least three years, the name of the person or agency that is to receive the information, the date the information was released, the nature of the information, and the statutory authority that permits the release; and

(5) information released under this section may be used only for the purpose or activity for which the information was released.

(d) Notwithstanding AS 40.25, a criminal justice agency may charge fees, established by regulation or municipal ordinance, for processing requests for records under this chapter, unless the request is from a criminal justice agency or is required for purposes of discovery in a criminal case. In addition to fees charged under AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint system, the department may charge fees for other services in connection with the processing of information requests, including fees for contacting other jurisdictions to determine the disposition of an out-of-state arrest or to clarify the nature of an out-of-state conviction. The department may also collect and account for fees charged by the Federal Bureau of Investigation for processing fingerprints forwarded to the bureau by the department. The annual estimated balance in the account maintained by the commissioner of administration under AS 37.05.142 may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter.

AS § 12.62.160

Page 3

(e) When an interested person requests information under (b)(9) of this section, the department may also obtain a national criminal history record check under AS 12.62.400 if the person submits the fingerprints and fees required for that check under (d) of this section.


CREDIT(S)

SLA 1994, ch. 118, § 2; SLA 2001, ch. 53, § 1; SLA 2004, ch. 79, § 6. Amended by SLA 2009, ch. 41, § 12, eff. June 21, 2009.

HISTORICAL AND STATUTORY NOTES

SLA 2009, ch. 41, in subsec. (a) substituted "are" for "is".

LIBRARY REFERENCES

Criminal Law  1226.
Westlaw Key Number Search: 110k1226.
C.J.S. Criminal Law § 1734.

RESEARCH REFERENCES

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d § 22:2, Antidiscrimination Law.

HRS Policies and Practices § 40:3, Alaska.


Investigating Employee Conduct App C, Arrest and Conviction Records.

Termination of Employment § 4:20, Arrests and Convictions.

NOTES OF DECISIONS

In general 1

1. In general

The legislature has expressed a bias in favor of public disclosure of public records, and doubtful cases should be resolved by permitting public inspection. AS 12.62.160, 40.25.120(a). Johnson v. State (2002) Alaska App., 50 P.3d 404. Records  30

In cases where there is no express exception to the state's disclosure laws and a party is requesting that access to

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AS § 12.62.160

Page 4

public records be restricted, Court of Appeals balances the public interest in disclosure on the one hand, and the privacy and reputation interests of the affected individuals together with the government's interest in confidentiality, on the other. AS 12.62.160, 40.25.120(a). Johnson v. State (2002) Alaska App., 50 P.3d 404. Records ↩ 32

In a case involving criminal records where a party is requesting that access to those records be restricted, Court of Appeals balances the public's right to know about an individual's past crimes against the convicted individual's right to privacy. AS 12.62.160, 40.25.120(a). Johnson v. State (2002) Alaska App., 50 P.3d 404. Records ↩ 32

Even if trial court had the authority to seal court criminal records if presented with extraordinary circumstances to override public access, trial court did not abuse its discretion in refusing to restrict access to records of felon convicted of kidnapping and rape whose probation and parole supervision ended nine years before he asked court to restrict access; felon had four letters praising him from co-workers, friends and a landlord, had won an award from an employer, had recently married, and was receiving harassing phone calls, had shed and truck vandalized, was falsely accused by co-worker of threatening him, had superiors display bad attitudes towards him, and believed co-workers had information on his convictions because company did background check. AS 12.62.160, 40.25.120(a). Johnson v. State (2002) Alaska App., 50 P.3d 404. Records ↩ 32

AS § 12.62.160, AK ST § 12.62.160

Current through the 2010 Second Regular Session of the 26th Legislature

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Westlaw

AS § 16.05.815

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 16. Fish and Game (Refs & Annos)

Chapter 05. Fish and Game Code (Refs & Annos)

Article 6. Miscellaneous Provisions

→ § 16.05.815. Confidential nature of certain reports and records

(a) Except as provided in (b) and (c) of this section, records required by regulations of the department concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of fishermen, buyers, and processors required by regulation of the department are confidential and may not be released by the department or by the Alaska Commercial Fisheries Entry Commission except as set out in this subsection. The department may release the records and reports set out in this subsection to the Alaska Commercial Fisheries Entry Commission. The department and the Alaska Commercial Fisheries Entry Commission may release the records and reports set out in this subsection to the recipients identified in this subsection if the recipient, other than a recipient under (5)--(9) of this subsection, agrees to maintain the confidentiality of the records and reports. The department and the Alaska Commercial Fisheries Entry Commission may release

(1) any of the records and reports to the National Marine Fisheries Service and the professional staff of the North Pacific Fishery Management Council as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the exclusive economic zone;

(2) any of the records and reports to the professional staff of the Pacific States Marine Fisheries Commission who are employed in the Alaska Fisheries Information Network project for the purpose of exchanging information with users authorized by the department;

(3) any of the records and reports to the Department of Revenue to assist the department in carrying out its statutory responsibilities;

(4) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable;

(5) such records and reports as necessary to be in conformity with a court order;

(6) on request, the report of a person to the person whose fishing activity is the subject of the report, or to a designee of the person whose fishing activity is the subject of the report;

(7) on request, annual statistical reports of a fisherman, buyer, or processor to the fisherman, buyer, or processor whose activity is the subject of the report, or to a designee of the fisherman, buyer, or processor whose activity is the subject of the report;

(8) any of the records and reports to the Department of Public Safety for law enforcement purposes;

(9) fish tickets, fish ticket information, records required of sport fishing guides, and annual statistical reports of fishermen, buyers, and processors and information in those reports to the law enforcement personnel of the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration for the purpose of enforcing fishery laws in waters of this state and in waters of the exclusive economic zone adjacent to this state;

(10) fish tickets, fish ticket information, and records required of sport fishing guides regarding halibut to the International Pacific Halibut Commission;

(11) any of the records and reports to the child support services agency created in AS 25.27.010, or the child support enforcement agency of another state, for child support purposes authorized under law;

(12) any of the records and reports to the Department of Natural Resources to assist the department in carrying out its statutory responsibilities in regard to sport fishing operations and sport fishing guides within the Kenai River Special Management Area under AS 41.21.500--41.21.514; and

(13) fish ticket information and records or reports of the total value purchased by each fisherman, buyer, or processor to the National Marine Fisheries Service for the purpose of enforcing the industry fee system of a fishing capacity reduction program under 16 U.S.C. 1861a (Magnuson-Stevens Fishery Conservation and Management Act).

(b) Except as provided in (c) of this section, records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public **information**.

(c) Crab stock abundance survey **information** that reveals crab catch by sampling location is **confidential** and is not subject to inspection or copying under AS 40.25.110 - 40.25.120 until the close of the fishing season for which the survey was conducted.

(d) Except as otherwise provided in this section, the department shall keep **confidential** (1) personal **information** contained in fish and wildlife harvest and usage data; and (2) the records of the department that concern (A) telemetry radio frequencies of monitored species; (B) denning sites; (C) nest locations of raptors that require special attention; (D) the specific location of animal capture sites used for wildlife research or management; and (E) the specific location of fish and wildlife species. The department may release records and **information** that

are kept **confidential** under this subsection if the release is necessary to comply with a court order, if the requestor is a state or federal agency, if the requestor is under contract with the state or federal agency to conduct research on a fish or wildlife population, or if the requestor has been authorized by the department to perform specific activities and agrees to use the records and **information** only for purposes as provided under a contract or agreement with the department. After 25 years, the records and **information** that are kept **confidential** under this subsection become public records subject to inspection and copying under AS 40.25.110 - 40.25.140 unless the department determines that the release of the records or **information** may be detrimental to the fish or wildlife population. In this subsection, "personal **information**" has the meaning given in AS 40.25.350.

CREDIT(S)

SLA 1970, ch. 117, § 1; SLA 1974, ch. 117, § 1; SLA 1980, ch. 66, § 1; SLA 1982, ch. 72, §§ 1, 2; SLA 1985, ch. 84, § 1; SLA 1988, ch. 115, §§ 1, 2; SLA 1989, ch. 32, § 1; SLA 1990, ch. 200, § 10; SLA 1994, ch. 89, § 1; SLA 1997, ch. 87, § 19; SLA 1999, ch. 59, § 1; SLA 2002, ch. 119, § 1; SLA 2004, ch. 70, § 5. Amended by SLA 2007, ch. 41, § 1, eff. July 4, 2007; SLA 2010, ch. 74, § 1, eff. June 12, 2010.

HISTORICAL AND STATUTORY NOTES

SLA 2004, ch. 70, § 9 provides:

"Transition; Regulations. The Board of Fisheries and the Department of Fish and Game each may proceed to adopt regulations necessary to implement the changes made by secs. 1, 3, 4, 5, and 6 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2005."

NOTES OF DECISIONS

Fish ticket **information** 2
Governmental agencies and divisions 1

1. Governmental agencies and divisions

The Commercial Fisheries Entry Commission may provide **confidential** fisheries data to the Legislative Audit Division because the division has the authority to obtain otherwise **confidential** data from state agencies, and statutory safeguards under AS 24.20.301(a) are in place to protect the **confidentiality** of that data once it has been transferred. Alaska Op.Atty.Gen. 663-91-0321, (March 27, 1991) 1991 WL 541948.

2. Fish ticket **information**

In light of the **confidentiality** provisions of AS 16.05.815, unless the individual on whose permit the fish tickets were reported signs a waiver, or unless a court order is obtained, fish ticket **information** can not be provided to the owner of the vessel from which fishing occurred, if the fishing was attributable to a permit holder other than the vessel owner. Alaska Op.Atty.Gen. 663-92-0516, (June 26, 1992) 1992 WI. 564955.

AS § 16.05.815

Page 4

AS § 16.05.815, AK ST § 16.05.815

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AS § 18.08.087

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 18. Health, Safety, and Housing

Chapter 08. Emergency Medical Services

→ § 18.08.087. Disclosure of medical records

When requested for the purpose of evaluating the performance of an emergency medical technician, mobile intensive care paramedic, or physician who provided emergency medical care or other assistance to a sick or injured person, a licensed physician, advanced nurse practitioner, or physician assistant may disclose to an emergency medical technician, a mobile intensive care paramedic, or physician the medical or hospital records of a sick or injured person to whom the paramedic, technician, or physician is providing or has rendered emergency medical care or assistance. However, the disclosing physician, nurse practitioner, or physician assistant shall limit disclosure under this section to the records that are **considered** necessary by the discloser for evaluation of the paramedic's, technician's, or physician's performance in providing the emergency medical care or assistance. A mobile intensive care paramedic, emergency medical care technician, or physician to whom **confidential** records are disclosed under this section may not further disclose the **information** to a person not entitled to receive that **information** under this section or another law.

CREDIT(S)

SLA 1993, ch. 36, § 19.

LIBRARY REFERENCES

Health ↪ 196, 642.

Westlaw Key Number Searches: 198Hk196; 198Hk642.

AS § 18.08.087, AK ST § 18.08.087

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Westlaw

AS § 18.16.060

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 18. Health, Safety, and Housing

Chapter 16. Regulation of Abortions (Refs & Annos)

→ § 18.16.060. Informed consent requirements

(a) Except as provided in (d) of this section, a person may not knowingly perform or induce an abortion without the voluntary and informed consent of

(1) a woman on whom an abortion is to be performed or induced;

(2) the parent, guardian, or custodian of a pregnant, unemancipated minor if required under AS 18.16.020; or

(3) a pregnant, unemancipated minor if authorized by a court under AS 18.16.030.

(b) Consent to an abortion is informed and voluntary when the woman or another person whose consent is required certifies in writing that the physician who is to perform the abortion, a member of the physician's staff who is a licensed health care provider, or the referring physician has verbally informed the woman or another person whose consent is required of the name of the physician who will perform the procedure and the gestational estimation of the pregnancy at the time the abortion is to be performed and has provided either

(1) the Internet **information** required to be maintained under AS 18.05.032; the physician or a member of the physician's staff who is a licensed health care provider shall provide a copy of the Internet **information** if a person requests a written copy; if a member of the physician's staff provides the **information** required under this paragraph, the member of the physician's staff shall offer the opportunity to consult with the physician; or

(2) **information** about the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would **consider** material to making a voluntary and informed decision of whether to undergo the procedure .

(c) The **information** required in (b) of this section shall be provided before the procedure in a private setting to protect privacy, maintain the **confidentiality** of the decision, ensure that the **information** focuses on the individual circumstances, and ensure an adequate opportunity to ask questions. Provision of the **information** telephonically or by electronic mail, regular mail, or facsimile transmittal before the person's appointment satisfies the requirements of this subsection as long as the person whose consent is required under (a) of this section has an opportunity to ask questions of the physician after receiving the **information**.

(d) Notwithstanding (a) of this section, informed consent that meets the requirements of (a)--(c) of this section is not required in the case of a medical emergency or if the pregnancy is the result of sexual assault under AS 11.41.410--11.41.427, sexual abuse of a minor under AS 11.41.434--11.41.440, incest under AS 11.41.450, or an offense under a law of another jurisdiction with elements similar to one of these offenses. In this subsection, "medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman that

(1) the immediate termination of the woman's pregnancy is necessary to avert the woman's death; or

(2) a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the woman.

CREDIT(S)

SLA 2004, ch. 178, § 5.

HISTORICAL AND STATUTORY NOTES

SLA 2004, ch. 178, § 1 provides:

"Legislative Findings. The legislature finds that

"(1) duties of the state include regulating medical practice and fostering the development of standards of professional conduct in a critical area of medical practice;

"(2) the state is interested in protecting the lives and health of pregnant women;

"(3) women have a right to know the medical risks associated with their reproductive options;

"(4) the creation of an unbiased, scientific **information** site on the Internet that is reviewed and approved for medical accuracy by recognized obstetrical and gynecological specialists designated by the State Medical Board and that sufficiently describes reproductive options and their potential consequences will protect, inform, and promote a woman's free and private choices between permanent and life-affecting alternatives;

"(5) the creation of an unbiased, scientific **information** site on the Internet that is reviewed and approved for medical accuracy by recognized obstetrical and gynecological specialists designated by the State Medical Board and that sufficiently describes reproductive options and their potential consequences will reduce costly and undue litigation, will promote judicial economy and resources, and will provide physicians with a clear understanding of what constitutes informed consent for abortion;

"(6) considerable testimony has been received indicating that women have, on occasion, received abortions in the state without **considering** sufficient **information**."


AS § 18.16.060

Page 3

SLA 2004, ch. 178, § 7 provides:

“Severability. Under AS 01.10.030, the provisions of this Act are severable.”

LIBRARY REFERENCES

Abortion and Birth Control  112.
Westlaw Key Number Search: 4k112.

AS § 18.16.060, AK ST § 18.16.060

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Westlaw

AS § 18.23.030

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 18. Health, Safety, and Housing

Chapter 23. Health Care Services **Information** and Review Organizations

Article 2. Medical Review Organizations

→ § 18.23.030. **Confidentiality of records of review organization**

(a) Except as provided in (b) of this section, all data and **information** acquired by a review organization in the exercise of its duties and functions shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization and is not subject to subpoena or discovery. Except as provided in (b) of this section, a person described in AS 18.23.020 may not disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter that is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within the person's knowledge, but a witness may not be asked about the witness's testimony before a review organization or opinions formed by the witness as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that **information** provided to a review organization was false and claims that the person providing the **information** knew or had reason to know the **information** was false.

(c) Nothing in AS 18.23.005-18.23.070 prevents a person whose conduct or competence has been reviewed under AS 18.23.005-18.23.070 from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records, and other evidence adduced before the review organization.

(d) Notwithstanding the provisions of (b) and (c) of this section, **information** contained in a report submitted to the State Medical Board, and **information** gathered by the board during an investigation, under AS 08.64.336 is not subject to subpoena or discovery unless and until the board takes action to suspend, revoke, limit, or condition a license of the person who is the subject of the report or investigation.


AS § 18.23.030

Page 2

CREDIT(S)

SLA 1976, ch. 102, § 40; SLA 1987, ch. 87, § 19.

LIBRARY REFERENCES

Witnesses  184(1).
 Westlaw Key Number Search: 410k184(1).
 C.J.S. Witnesses § 297.

RESEARCH REFERENCES

Treatises and Practice Aids

The Legal Audit: Corporate Internal Investigation § 9:63, Current Issues Concerning Protection of Auditing Materials--State Audit Privilege Legislation--Other Self-Evaluative Privilege Legislation.

The Legal Audit: Corporate Internal Investigation § 9:66, Current Issues Concerning Protection of Environmental Auditing Materials--Protection by Self-Evaluative Privilege.


Wright & Miller: Federal Prac. & Proc. § 5431, General Rule--Other Novel Privileges.


NOTES OF DECISIONS

Confidentiality 1

Construction and application 1/2

1/2. Construction and application

Peer review statute governing the **confidentiality** of peer review records does not bar the use of evidence that is available from an independent source. Grandstaff v. State (2007) Alaska App., 171 P.3d 1176. Privileged Communications And **Confidentiality**  422(1)

Inculpatory statements made by defendant during peer review investigation into his sexual conduct with patients was not protected under statute governing peer review privilege, in prosecution for sexual assault, issuance of prescriptions that had no medical purpose to patients, and stealing Medicaid funds, as legislative history, coupled with consistent reading of provisions under statute, indicated that privilege applied to civil actions only. Grandstaff v. State (2007) Alaska App., 171 P.3d 1176. Privileged Communications And **Confidentiality**  422(1)

1. Confidentiality

While total **confidentiality** of the **information** held by the Infant Mortality Review Committee cannot be assured, the circumstances under which **information** can be obtained will be extremely rare. The **confidentiality**

AS § 18.23.030

Page 3

provisions restricting the disclosure of **information** help to encourage candor by an individual who communicates **information** to the IMRC, which in turn allows the IMRC to better accomplish its mission. Alaska Op.Atty.Gen. 663-96-0336, (July 31, 1996) 1996 WL 1062224.

AS § 18.23.030, AK ST § 18.23.030

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Title 18. Health, Safety, and Housing
 Chapter 66. Domestic Violence and Sexual Assault
 Article 5. Domestic Violence Fatality Review Teams
 → § 18.66.400. Domestic violence fatality review teams

(a) The commissioner of public safety may establish domestic violence fatality review teams in areas of the state. A municipality may establish a domestic violence fatality review team in a municipality. When the investigation of fatal incidents of domestic violence and incidents of domestic violence involving serious physical injury has been completed or adjudicated by law enforcement or at an earlier appropriate time, a domestic violence fatality review team may review those incidents for the purpose of preventing domestic-violence-related fatalities, improving the response of law enforcement and other agencies to domestic violence, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence. The review may include a review of events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by agencies and persons related to the incident and persons involved in the incident, and other **information** the team determines to be relevant to the review. The **confidential** and other records of a department or agency of the state or a municipality relating to the domestic violence incident may be examined by the domestic violence fatality review team or a member of the team. The domestic violence fatality review team and each member of the team shall preserve the **confidentiality** of any records examined. In this subsection, "serious physical injury" has the meaning given in AS 11.81.900.

(b) The membership of a domestic violence fatality review team shall be determined by the commissioner of public safety or the municipality, as appropriate. Membership may include representatives from

- (1) law enforcement agencies within the area or municipality;
- (2) the district attorney for the area or municipality and municipal prosecutor if created by a municipality;
- (3) the office of the chief medical examiner;
- (4) the Department of Corrections;
- (5) employees of the Department of Health and Social Services who deal with domestic violence;
- (6) local agencies and organizations involved with crime victim and domestic violence protection, reporting, and counseling and assistance;

(7) other organizations, departments, and agencies determined to be appropriate.

(c) The victims' advocate under AS 24.65 is an ex officio member of each domestic violence fatality review team created under this section and may attend any meeting and review any **information** available to or **considered** by a team.

(d) Except for a public report issued by a domestic violence fatality review team that does not contain **confidential information**, records or other **information** collected by a team or any member of a team related to duties under this section is **confidential** and not subject to public disclosure under AS 40.25.100 and 40.25.110. Meetings of a domestic violence fatality review team are closed to the public and are not subject to the provisions of AS 44.62.310 - 44.62.319 (Open Meetings Act).

(e) The determinations, conclusions, and recommendations of a domestic violence fatality review team or its members are not admissible in a civil or criminal proceeding. A member may not be compelled to disclose a determination, conclusion, recommendation, discussion, or thought process through discovery or testimony in a civil or criminal proceeding. Records and **information** collected by the team are not subject to discovery or subpoena in connection with a civil or criminal proceeding.

(f) Notwithstanding (e) of this section, an employee of a state or a municipal agency may testify in a civil or criminal proceeding concerning cases reviewed by a domestic violence fatality review team even though the agency's records were reviewed by a team and formed the basis of that employee's testimony and the team's report.

(g) A person who serves on a domestic violence fatality review team is not liable for damages or other relief in an action brought by reason of the performance of a duty, function, or activity of the team.

CREDIT(S)

SLA 2004, ch. 19, § 1.

HISTORICAL AND STATUTORY NOTES

In 2010, "AS 44.62.310 - 44.62.319 (Open Meetings Act)" was substituted for "AS 44.62.310 and 44.62.312" in subsec. (d) by the revisor.

LAW REVIEW AND JOURNAL COMMENTARIES

A sexual relationship, did we have one? A review of the definition of "sexual relationship" within the context of Alaska's domestic violence laws. Beth Goldstein Lewis Trimmer, 24 Alaska L. Rev. 237 (December 2007).

AS § 18.66.400, AK ST § 18.66.400

AS § 18.66.400

Page 3

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AS § 21.06.060

Page 1

C

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Title 21. Insurance

Chapter 06. The Director of Insurance (Refs & Annos)

→ § 21.06.060. Records

(a) The director shall enter in permanent form records of official transactions, examinations, investigations, and proceedings and keep those records in the office of the director. The records and insurance filings in the office of the director are open to public inspection, except as otherwise provided in (b)--(g) of this section or other provisions of this title with respect to particular records or filings.

(b) **Information** and records, including written documents and electronic data, designated as **confidential** or not available for public inspection under this section or other provisions of this title

(1) are not subject to inspection and copying under AS 40.25.110--40.25.220;

(2) may not be obtained from the director by subpoena, except for a subpoena issued by a state or federal law enforcement agency or grand jury;

(3) may be used by the director in a regulatory or legal proceeding; and

(4) may be released for public inspection if the person who provided the **information** or records to the director consents or releases incomplete or misleading **information** on the same topic to the public.

(c) The director or a person acting under the authority of the director who receives **information** or records designated in this title as **confidential** or not available for public inspection may not be permitted or required to testify about the **information** or records in a civil action not involving the state or a state agency, officer, or employee.

(d) A person required or requested to provide **information** or records to the director under this title does not waive a claim of privilege that the person may have by providing the **information** or records to the director.

(e) In the performance of duties under this title, the director may

(1) disclose **confidential information** or records to the legislature, state, federal, and international regulatory or law enforcement agencies, or the National Association of Insurance Commissioners if the recipient will maintain the **confidentiality** of the **information** or records;

(2) receive **information** or records from state, federal, and international regulatory or law enforcement authorities or the National Association of Insurance Commissioners and maintain the **confidentiality** of the **information** or records if requested to do so or given notice that the **information** or records are **confidential** under the law of the jurisdiction supplying them; and

(3) enter into agreements consistent with this section governing the sharing of **information** or records that are **confidential** under this title with other state, federal, and international regulatory or law enforcement agencies or the National Association of Insurance Commissioners for the purpose of furthering any regulatory or legal action that may be taken as part of the recipient's official duties.

(f) The following **information** or records submitted to or obtained by the director are **confidential**:

(1) personally identifiable consumer **information**; however, the director may disclose the **information** or records for the purpose of attempting to resolve a consumer complaint;

(2) **information** or records established by a showing satisfactory to the director to be a trade secret or proprietary business **information**, including

(A) detailed health insurance claim cost data; and

(B) justification for usual, customary, and reasonable charge determinations;

(3) **information** or records provided by a person not subject to this title at the request of the director if the **information** or records are identified as **confidential** by the director; and

(4) analysis ratios and examination synopses concerning insurance companies that are submitted to the director by the National Association of Insurance Commissioners.

(g) The director may withhold **information** or records from public inspection for as long as the director finds the withholding is

(1) necessary to protect a person against unwarranted injury; or

(2) in the public interest.

CREDIT(S)

SLA 1966, ch. 120, § 1; SLA 2002, ch. 38, §§ 2, 3. Amended by SLA 2009, ch. 30, § 1, eff. July 1, 2009.

AS § 21.06.060


Page 3

HISTORICAL AND STATUTORY NOTES

SLA 2009, ch. 30, deleted "Financial" at the beginning of subsec. (f), par. (4).

LIBRARY REFERENCES

Insurance  1046, 1580.

Records  31.

Westlaw Key Number Searches: 217k1046; 217k1580; 326k31.

C.J.S. Criminal Law § 449.

C.J.S. Insurance § 50.

C.J.S. Records §§ 74 to 92.

AS § 21.06.060, AK ST § 21.06.060

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AS § 21.07.040

Page 1

C

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Title 21. Insurance

Chapter 07. Regulation of Managed Care Insurance Plans

→ § 21.07.040. Confidentiality of managed care information

- (a) Medical and financial **information** in the possession of a managed care entity regarding an applicant or a current or former person covered by a managed care plan is **confidential** and is not subject to public disclosure.
- (b) This section does not apply to medical **information** that is disclosed if
- (1) the individual whose identity is disclosed gives oral, electronic, or written consent to the disclosure;
 - (2) the **information** is disclosed for research
 - (A) that is subject to federal law and regulations protecting the rights and welfare of research participants; or
 - (B) using health **information** that protects the **confidentiality** of participants by coding or encryption of **information** that would otherwise identify the patient;
 - (3) the **information** is disclosed for purposes of obtaining reimbursement under health insurance;
 - (4) the **information** is disclosed at the written request of the covered person;
 - (5) the disclosure is required by law.
- (c) Nothing in this section may be construed to prohibit the exchange of medical **information** between and among health care providers of an applicant or a person currently or formerly covered by a managed care plan for purposes of providing medical care services.
- (d) This section does not apply to a managed care entity that is subject to AS 21.36.

CREDIT(S)

SLA 2000, ch. 99, § 2; SLA 2002, ch. 38, § 6; SLA 2004, ch. 96, §§ 3, 4; SLA 2006, ch. 80, § 7, eff. July 1, 2006.

LIBRARY REFERENCES

Health ↪ 196.

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AS § 21.07.040

Page 2

Insurance  1594.

Westlaw Key Number Searches: 198Hk196; 217k1594.

AS § 21.07.040, AK ST § 21.07.040

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AS § 23.20.110

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 23. Labor and Workers' Compensation (Refs & Annos)

■ Chapter 20. Alaska Employment Security Act

■ Article 1. Administration (Refs & Annos)

→ § 23.20.110. **Information obtained by department**

(a) Except for disclosures required by 42 U.S.C. 503, as amended, and 20 C.F.R. 603, as amended, and disclosures authorized under this section, the department shall hold **information** obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual **confidential** and may not disclose them or open them to public inspection in a manner that reveals the identity of the individual or employing unit. A claimant or an employing unit is entitled to **information** from the records of the department only to the extent necessary to properly present or protest a claim or determination under this chapter. The department may not provide **information** that is **confidential** under this section to a person for use in any civil or administrative matter not directly involving the presentation or protest of a claim or determination under this chapter; however, subject to restrictions that the department prescribes by regulation, the information must be made available to the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services, for the purpose of verifying a claimant's immigration status, to the United States Railroad Retirement Board, to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, to the United States Department of the Treasury, Internal Revenue Service, for the purposes of the Federal Unemployment Tax Act, [FN1] or to the Department of Revenue for tax purposes. Information obtained in the course of administering this chapter or in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or the administration of employment and training programs planned or coordinated by the Alaska Workforce Investment Board under AS 23.15.550--23.15.585.

(b) Upon request the department shall furnish to an agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to a state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to benefits under this chapter.

(c) Upon request of an agency of this or another state or of the federal government which administers or operates one or more programs of public assistance under either federal law or the law of this state, or which is charged with any duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this section, the department shall provide, with respect to any named individual specified by the requesting agency, the following information:

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- (1) whether the individual is receiving, has received, or has made application for unemployment compensation under this chapter;
 - (2) the period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid;
 - (3) the individual's most recent address; and
 - (4) whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and rate of pay.
- (d) The department may require that an agency or authorized person to which it provides information under this section reimburse the department for its costs of furnishing that information.
- (e) The department shall provide wage and unemployment compensation information
- (1) requested by a state or federal agency under an income and eligibility verification system that meets the requirements of 42 U.S.C. 1320b-7 (Social Security Act);
 - (2) as required by federal law for child support purposes;
 - (3) to the United States Secretary of Health and Human Services for the National Directory of New Hires as required by 42 U.S.C. 503 and 42 U.S.C. 653; or
 - (4) to a state or a political subdivision of a state that administers a program funded under 42 U.S.C. 601--619 that provides temporary assistance for needy families.
- (f) Repealed.
- (g) A recipient of records disclosed under this section may not use the disclosed records for a purpose other than the purpose for which the disclosure was made. The requirements concerning the confidentiality of information obtained in the course of administering this chapter apply to officers and employees of a state, federal, municipal, or other agency to whom the department provides information as authorized by this section.
- (h) Repealed by S.I.A. 2008, ch. 45, § 13, eff. May 29, 2008.
- (i) Repealed by S.I.A. 2008, ch. 45, § 13, eff. May 29, 2008.

(j) Repealed by S.L.A. 2008, ch. 45, § 13, eff. May 29, 2008.

(k) If an individual who is applying for or participating in a housing assistance program administered by the United States Department of Housing and Urban Development gives authorization, the department shall disclose, to the United States Department of Housing and Urban Development or to representatives of the housing assistance program operating the program, wage information and unemployment compensation information. The authorization shall be made by the individual on a consent form approved by the department. The form must state the information authorized to be released and require the signature of the individual. In this subsection,

(1) "unemployment compensation information" means whether the individual is receiving, has received, or has applied for unemployment compensation, and the amount of unemployment compensation that the individual is receiving, has received, or is eligible to receive, and the individual's current address and other contact information;

(2) "wage information" means the social security number, or numbers if there are more than one, and quarterly wages of an employee, and the name, address, state, and, if known, federal employer identification number of an employer reporting wages under this chapter.

(l) The department may provide information obtained under this chapter to an agency of this state or to a person under contract with the state to

(1) verify the eligibility of an applicant for a public benefit or a publicly financed payment;

(2) assist the state in the collection of fines, penalties, judgments of restitution on behalf of victims of crimes or delinquent acts, or other payments ordered by a court or an administrative agency; or

(3) collect money owed to the fund under this chapter.

(m) The department may not release **information** under this section to a state agency or to a person under contract with the state until the department and the agency or person have entered into a written agreement that governs the release of **information**. The written agreement must specify

(1) the purpose for the **information**;

(2) a description of the **information** to be provided;

(3) a description of the procedure for transmitting, securing, using, and disposing of the **information**;

(4) the method of reimbursement, if any, for the cost of providing the **information**; and

(5) that the department may perform on-site inspections to ensure that the **confidentiality** requirements of this section are met.

(n) Notwithstanding (a) of this section, the department may produce statistical and other public reports based on **information** obtained in the course of administering this chapter, so long as the department complies with the requirements of 20 C.F.R. 603, as amended, regarding the use or release of **confidential** records.

(o) Upon request and for child support purposes authorized under law, the department shall provide to the child support services agency created in AS 25.27.010, or the child support enforcement agency of another state, the following:

(1) the name, address, social security number, ordinary occupation, and employment status of each applicant for or recipient of benefits under this chapter;

(2) information about the applicant's or recipient's right to benefits under this chapter;

(3) the name, address, and employer identification number of the applicant's or recipient's current or former employer;

(4) information, if available, on the applicant or recipient concerning

(A) earnings or other income of the applicant or recipient;

(B) benefits from employment, including rights to or enrollment in group health care coverage; and

(C) the type, status, location, and amount of assets of or debts owed by or to the applicant or recipient.

(p) Upon the written request by a state district attorney, a municipal attorney, a United States attorney, or the Federal Bureau of Investigation, the department may release to the requestor information under this section for the investigation or prosecution of a crime or to enforce an order of a court in a criminal matter, including enforcing probation or parole conditions.

(q) The confidentiality requirements of this section do not apply to disclosure of decisions and records on appeal in any matter before the department as long as the federal social security number of the claimant and the employer's federal employer identification number and federal social security number are redacted or removed before disclosure is made.

(r) In this section, "judgment of restitution" has the meaning given in AS 09.38.500.

CREDIT(S)

1st Ex. Sess. 1955, ch. 5, § 323; SLA 1969, ch. 79, § 1; SLA 1977, ch. 122, § 2; SLA 1980, ch. 9, § 3; SLA 1982, ch. 115, § 2; SLA 1985, ch. 60, § 1, 2; SLA 1988, ch. 40, §§ 2, 3; SLA 1989, ch. 100, § 2; SLA 1996, ch. 43, §§ 1-3; SLA 1997, ch. 87, §§ 33, 34; SLA 1999, ch. 58, § 27; SLA 2000, ch. 51, § 1; SLA 2001, ch. 92, §§ 15, 16; SLA 2002, ch. 86, § 41; SLA 2004, ch. 130, §§ 1, 2. Amended by SLA 2008, ch. 45, §§ 1 to 7, 13, eff. May 29, 2008.

[FN1] See 26 U.S.C.A. § 3301 et seq.

HISTORICAL AND STATUTORY NOTES

SLA 2008, ch. 45, rewrote the section, which had read:

“(a) Except as provided in (h) and (i) of this section, the department shall hold information obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual confidential and may not disclose them or open them to public inspection in a manner that reveals the identity of the individual or employing unit. A claimant or an employing unit, or the legal representative of the claimant or the employing unit, is entitled to information from the records of the department to the extent necessary to properly present or protest a claim or determination under this chapter. Subject to restrictions that the department prescribes by regulation, the information may be made available to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the Internal Revenue Service of the United States, or, for tax purposes, to the Department of Revenue. Information obtained in the course of administering this chapter or in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or the administration of employment and training programs planned or coordinated by the Alaska Workforce Investment Board under AS 23.15.550--23.15.585.

“(b) Upon request the department shall furnish to an agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to a state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to benefits under this chapter.

“(c) Upon request of an agency of this or another state or of the federal government which administers or operates one or more programs of public assistance under either federal law or the law of this state, or which is charged with any duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the **confidentiality of information** at least as effective as required under this section, the department shall provide, with respect to any named individual specified by the requesting agency, the following **information**:

“(1) whether the individual is receiving, has received, or has made application for unemployment compensa-

tion under this chapter;

“(2) the period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid;

“(3) the individual's most recent address; and

“(4) whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and rate of pay.

“(d) The department may require that an agency or authorized person to which it provides information under this section reimburse the department for its costs of furnishing that information.

“(e) The department shall provide information

“(1) requested by a state or federal agency under an income and eligibility verification system that meets the requirements of 42 U.S.C. 1320b-7 (Social Security Act); or

“(2) as required by federal law for child support purposes.

“(f) Repealed.

“(g) The requirements of this section concerning the **confidentiality of information** obtained in the course of administering this chapter apply to officers and employees of a state, federal, or municipal agency to whom the department provides **information** as authorized by this section.

“(h) The department shall make **information** obtained from an employing unit or an individual available on request to an administrator of a joint administered defined pension benefit plan established under 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act) to assist the administrator in verifying whether a person receiving a retirement benefit from the plan has been employed in the last six months. To the extent the **information** is available to the department, the department shall provide the administrator with the name and address of the person's current employer and the person's current occupation. The administrator shall keep **information** received under this subsection **confidential**. However, the administrator may reveal the **information** if it is relevant to a legal proceeding in which the administrator or the plan is a party. The department may require the plan to reimburse the department for the cost of furnishing the **information**.

“(i) The department shall publicly disclose **information** obtained from an employing unit or an individual as provided in this subsection to encourage employers to voluntarily **consider** the availability of qualified job seekers who are residents of the state. The department shall issue a report that discloses the names of all public and private employers who employ at least 20 employees. The report must address the employment record of each employer subject to this subsection and must contain the results of the department's analysis of the employers' practices of hiring persons who are not residents of the state. The department may not use the results of the

analysis to limit or deny services or benefits or to discriminate against an employer. The department may not disclose information under this subsection that would individually identify an employee.

“(j) Notwithstanding (h) or (i) of this section, the department may not release information to an administrator under (h) of this section or on an employer's hiring practices under (i) of this section if the United States Secretary of Labor rules that release of the information would be grounds to find that the state is in substantial non-compliance with 42 U.S.C. 503(a).

“(k) If an individual who is applying for or participating in a housing assistance program administered by the United States Department of Housing and Urban Development gives authorization, the department shall disclose, to the United States Department of Housing and Urban Development or to representatives of the housing assistance program operating the program, wage information and unemployment compensation information. The authorization shall be made by the individual on a consent form approved by the department. The form must state the information authorized to be released and require the signature of the individual. In this subsection,

“(1) ‘unemployment compensation information’ means whether the individual is receiving, has received, or has applied for unemployment compensation, and the amount of unemployment compensation that the individual is receiving or will receive;

“(2) ‘wage information’ means the social security number, or numbers if there are more than one, and quarterly wages of an employee, and the name, address, state, and, if known, federal employer identification number of an employer reporting wages under this chapter.

“(l) The department may provide information obtained under this chapter to an agency of this state or to a person under contract with the state to

“(1) verify the eligibility of an applicant for a public benefit or a publicly financed payment;

“(2) assist the state in the collection of fines, penalties, judgments of restitution on behalf of victims of crimes or delinquent acts, or other payments ordered by a court or an administrative agency; or

“(3) collect money owed to the fund under this chapter.

“(m) The department may not release information under this section to a state agency or to a person under contract with the state until the department and the agency or person have entered into a written agreement that governs the release of information. The written agreement must specify

“(1) the purpose for the information;

“(2) a description of the information to be provided;

“(3) a description of the procedure for transmitting, securing, using, and disposing of the information; and

“(4) the method of reimbursement, if any, for the cost of providing the information.

“(n) The department may produce statistical and other public reports based on information obtained in the course of administering this chapter, so long as the reports do not reveal wage and payroll data for an employing unit or the name or number identifying an individual. The reports may include the firm name, address, North American Industry Classification System code, census area code, number of workers employed, and occupational staffing patterns for an employing unit.

“(o) Upon request and for child support purposes authorized under law, the department shall provide to the child support services agency created in AS 25.27.010, or the child support enforcement agency of another state, the following:

“(1) the name, address, social security number, ordinary occupation, and employment status of each applicant for or recipient of benefits under this chapter;

“(2) information about the applicant's or recipient's right to benefits under this chapter;

“(3) the name, address, and employer identification number of the applicant's or recipient's current or former employer;

“(4) information, if available, on the applicant or recipient concerning

“(A) earnings or other income of the applicant or recipient;

“(B) benefits from employment, including rights to or enrollment in group health care coverage; and

“(C) the type, status, location, and amount of assets of or debts owed by or to the applicant or recipient.

“(p) Upon the written request by a state district attorney, a municipal attorney, a United States attorney, or the Federal Bureau of Investigation, the department may release to the requestor information under this section for the investigation or prosecution of a crime or to enforce an order of a court in a criminal matter, including enforcing probation or parole conditions.

“(q) In this section, ‘judgment of restitution’ has the meaning given in AS 09.38.500.”

SLA 2008, ch. 45, § 14 provides:

“TRANSITION: REGULATIONS. Notwithstanding sec. 16 of this Act, the Department of Labor and Workforce Development may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory change.”

AS § 23.20.110

Page 9

In 2008 new subsec. (r) was redesignated as (q) and existing subsec. (q) as (r) by the revisor.

LIBRARY REFERENCES

Records ☞ 30 to 35.
Westlaw Key Number Searches: 326k30 to 326k35.
C.J.S. Criminal Law § 449.
C.J.S. Records §§ 60, 62 to 65, 67 to 93, 95.

NOTES OF DECISIONS

Grand jury subpoenas 1

1. Grand jury subpoenas

State was required by Supremacy Clause to comply with federal grand jury subpoena for production of individual's unemployment compensation records, despite state confidentiality statute, regardless of whether there was separate court order for enforcement of subpoena. U.S.C.A. Const. Art. 6, cl. 2; AS 23.20.110. In re Grand Jury Subpoena (2002) D.Alaska, 198 F.Supp.2d 1113. Grand Jury ☞ 36.3(1); Grand Jury ☞ 36.4(1)

State was barred by Supremacy Clause from prosecuting employees of state department of labor for complying with federal grand jury subpoena to produce individual's unemployment benefit records, despite state confidentiality statute. U.S.C.A. Const. Art. 6, cl. 2; AS 23.20.110. In re Grand Jury Subpoena (2002) D.Alaska, 198 F.Supp.2d 1113. Records ☞ 31; States ☞ 18.15

AS § 23.20.110, AK ST § 23.20.110

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Westlaw

AS § 27.21.100

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 27. Mining

Chapter 21. Alaska Surface Coal Mining Control and Reclamation Act

Article 2. Surface Coal Mining

→ § 27.21.100. **Public information and inspection**

(a) An applicant for a permit shall file a copy of the application for public inspection at a location designated by the commissioner near the area of the proposed surface coal mining operation. The applicant may exclude from the copy filed under this subsection **information** that is **confidential** under (c) of this section.

(b) Copies of records, permits, inspection materials, data obtained under AS 27.21.120, or other **information** obtained under this chapter by the commissioner relating to a surface coal mining and reclamation operation, other than **information** that is **confidential** under (c) of this section, must be made immediately and conveniently available to the public at the district office of the department closest to the location of the surface coal mining and reclamation operation.

(c) Information

(1) gathered from the proposed permit area included in the application for a permit and pertaining to coal seams, test borings, core samplings, or soil samples must be made available to any person with an interest that is or may be adversely affected, except that **information** that relates only to the analysis of the chemical and physical properties of the coal, other than **information** regarding the mineral or elemental content that is potentially toxic in the environment, must be kept **confidential** and not made a matter of public record;

(2) in the applicant's reclamation plan relating to the competitive rights of the applicant, including but not limited to trade secrets, commercial or financial **information**, and geologic **information** specifically identified as **confidential** by the applicant and determined by the commissioner to be not essential for public review shall be kept **confidential** and not be made a matter of public record.

CREDIT(S)

SLA 1982, ch. 29, § 1; SLA 1997, ch. 56, § 1.

LIBRARY REFERENCES

Mines and Minerals 92.18.

Westlaw Key Number Search: 260k92.18.

AS § 27.21.100

Page 2

C.J.S. Mines and Minerals § 383.

AS § 27.21.100, AK ST § 27.21.100

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C

West's Alaska Statutes Annotated Currentness

Title 31. Oil and Gas

▣ Chapter 05. Alaska Oil and Gas Conservation Act

▣ Article 1. Administration

→ § 31.05.035. **Confidential reports**

- (a) For all wells for which a permit to drill has been issued by the commission, the commission may require
- (1) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface **information** on a well for which a permit to drill has been issued by the commission;
 - (2) the filing of flow test **information** and all logs, except experimental logs and velocity surveys run on a well and not required by (1) of this subsection; and
 - (3) the operator to make available for copying the digitized log **information**, if it is available, on any log required to be filed under (1) or (2) of this subsection.
- (b) Reports and **information** required under (a)(1) and (2) of this section shall be filed within 30 days after the completion, abandonment, or suspension of a well. However, under (a)(1) of this section, the commission may not require the making of a log on a well completed, abandoned or suspended before June 19, 1970.
- (c) The reports and information required in (a) of this section that relate to an exploratory or stratigraphic test well and those portions of an application for a permit to drill an exploratory or stratigraphic test well that the commission determines contain proprietary engineering or geotechnical **information** shall be kept **confidential** for 24 months following the 30-day filing period unless the owner of the well gives written permission to release the application and reports and **information** at an earlier date. If the commissioner of natural resources finds that the required reports and **information** contain significant **information** relating to the valuation of unleased land in the same vicinity, the commissioner shall keep the reports and **information confidential** for a reasonable time after the disposition of all affected unleased land, unless the owner of the well gives written permission to release the reports and **information** at an earlier date. Well surface and bottom hole locations, well depth, well status, production data, and production reports required by the commission to be filed subsequent to the 30-day filing period shall be **considered public information** and may not be classified **confidential**. Production data, as used in this subsection, means volume, gravity, and gas-oil ratio of all production of oil or gas after the well begins regular production.
- (d) Engineering, geological, and other **information** not required by (a) of this section but voluntarily filed with

the commission shall be kept **confidential** if the person filing the **information** so requests.

(e) Notwithstanding (c) of this section, claims of **confidentiality** will be denied for **information** disclosed to the commission under AS 31.05.030(h) that is required to be disclosed under 42 U.S.C. 300h - 4.

(f) **Confidentiality** under (d) of this section is not applicable to **information** submitted with or as part of a petition for a commission order or to **information** submitted for or as part of a hearing before the commission.

CREDIT(S)

SLA 1970, ch. 209, § 2; SLA 1978, ch. 160, §§ 3--6; SLA 1984, ch. 6, § 86; SLA 1984, ch. 91, § 2. Amended by SLA 2007, ch. 54, §§ 6 to 8, eff. July 13, 2007.

CROSS REFERENCES

Exploration incentive credits, see § 41.09.010.
 Oil and gas exploration, alternative tax credit, see § 43.55.025
 Pipeline Act, records inspection, see § 42.06.440.

NOTES OF DECISIONS

Period of **confidentiality** 2
 Trade secrets 1

1. Trade secrets

Oil drillers' oil well data submitted to Department of Natural Resources pursuant to Alaska Oil and Gas Conservation Act constituted "trade secrets" protected under both Alaska and United States Constitutions, for purposes of takings claim, since value of data depended on its secrecy and companies obviously attempted to keep it secret. AS 31.05.035(a, c), 45.50.910 et seq., 45.50.940(3); Const. Art. 1, § 1. State Dept. of Natural Resources v. Arctic Slope Regional Corp., 1991, 834 P.2d 134, petition for rehearing filed. Eminent Domain ⚡ 87

2. Period of **confidentiality**

Department of Natural Resources' use of oil drillers' oil well data submitted pursuant to Alaska Oil and Gas Conservation Act without compensation after initial **confidentiality** period did not constitute unconstitutional taking of property under State or Federal Constitutions, where companies had no reasonable, investment-backed expectation that DNR would not use well data for internal departmental purposes following initial **confidentiality** period. Const. Art. 1, § 18; U.S.C.A. Const.Amend. 5; Rules Civ.Proc., Rule 52(a); Rule 77(m) (1990); 18 U.S.C.A. § 1905; AS 31.05.035(c). State Dept. of Natural Resources v. Arctic Slope Regional Corp., 1991, 834 P.2d 134, petition for rehearing filed. Eminent Domain ⚡ 2.14

AS § 31.05.035, AK ST § 31.05.035

AS § 31.05.035

Page 3

Current through the 2010 Second Regular Session of the 26th Legislature

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C

West's Alaska Statutes Annotated Currentness

Title 40. Public Records and Recordors

▣ Chapter 25. Public Record Disclosures (Refs & Annos)

▣ Article 1. Inspection and Copying of Public Records

→ § 40.25.100. Disposition of tax information

(a) Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except as provided in AS 43.05.230(i) or for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.405--43.05.499, or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes, or prohibit the publication of records, proceedings, and decisions under AS 43.05.405--43.05.499.

(b) If a copy of a record of tax information is requested under (a) of this section for the purposes of child support administration, the copy may be released only to the child support services agency created in AS 25.27.010 or a child support enforcement agency of another state. The Department of Revenue shall provide the requesting agency with a copy of the record. The requesting agency receiving information under this subsection may use it only for child support purposes authorized under law.

CREDIT(S)

SLA 1962, ch. 101, § 3.21; SLA 1996, ch. 108, § 2; SLA 1997, ch. 87, §§ 10, 11; SLA 1998, ch. 37, § 1; SLA 2004, ch. 163, § 61.

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West's Alaska Statutes Annotated Currentness

Title 40. Public Records and Recorders

▣ Chapter 25. Public Record Disclosures (Refs & Annos)

▣ Article 1. Inspection and Copying of Public Records

→ § 40.25.120. Public records; exceptions; certified copies

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings, which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles unless disclosure is authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law;

(5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance;

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

(D) could reasonably be expected to disclose the identity of a confidential source;

(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecu-

tions;

(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

(G) could reasonably be expected to endanger the life or physical safety of an individual;

(7) names, addresses, and other information identifying a person as a participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the advance college tuition savings program under AS 14.40.803--14.40.817;

(8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) reports submitted under AS 05.25.030 concerning certain collisions, accidents, or other casualties involving boats;

(10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;

(11) the written notification regarding a proposed regulation provided under AS 24.20.105 to the Department of Law and the affected state agency and communications between the Legislative Affairs Agency, the Department of Law, and the affected state agency under AS 24.20.105;

(12) records that are

(A) proprietary, privileged, or a trade secret in accordance with AS 43.90.150 or 43.90.220(e);

(B) applications that are received under AS 43.90 until notice is published under AS 43.90.160.

(b) Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 40.25.110-40.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants, subject to reasonable rules and regulations as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

CREDIT(S)

SLA 1962, ch. 101, § 3.23; SLA 1990, ch. 200, § 5; SLA 1994, ch. 113, § 1; SLA 1997, ch. 102, § 1; SLA 1998, ch. 65, § 2; SLA 2000, ch. 3, § 1; SLA 2000, ch. 28, § 24; SLA 2002, ch. 36, § 1; SLA 2004, ch. 164, § 4. Amended by SLA 2007, ch. 22, § 5, eff. June 8, 2007; SLA 2008, ch. 76, § 2, eff. July 1, 2008.

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AS § 40.25.140

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 40. Public Records and Recorders

▣ Chapter 25. Public Record Disclosures (Refs & Annos)

▣ Article 1. Inspection and Copying of Public Records

→ **§ 40.25.140. Confidentiality of library records**

(a) Except as provided in (b) of this section, the names, addresses, or other personal identifying information of people who have used materials made available to the public by a library shall be kept confidential, except upon court order, and are not subject to inspection under AS 40.25.110 or 40.25.120. This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska.

(b) Records of a public elementary or secondary school library identifying a minor child shall be made available on request to a parent or guardian of that child.

CREDIT(S)

SLA 1985, ch. 35, § 1.

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AS § 40.25.151

Page 1

C

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Title 40. Public Records and Recorders

▣ Chapter 25. Public Record Disclosures (Refs & Annos)

▣ Article 1. Inspection and Copying of Public Records

→ § 40.25.151. Confidentiality of retirement records

(a) Except as provided in (b)--(d) of this section, public records, including electronic services and products involving public records, containing information about a person and maintained under AS 14.25, AS 22.25, AS 26.05.222--26.05.229, AS 39.35, or former AS 39.37 shall be kept confidential and are not subject to inspection or copying under AS 40.25.110--40.25.120.

(b) Records described in (a) of this section concerning a person who is a member or former member of a state retirement system who is still living may only be released to

- (1) the person or the person's guardian;
- (2) the person's employer or former employer;
- (3) a state agency authorized to obtain confidential information;
- (4) another person if the person has

(A) written authorization for release from the affected member or former member or the member's or former member's guardian; or

(B) a court order or subpoena to obtain the information.

(c) Records described in (a) of this section concerning a member or former member of a state retirement system who is deceased or a deceased member's named beneficiary may only be released to

- (1) the member's named beneficiary or the beneficiary's guardian;
- (2) the member's or former member's former employer;

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(3) a state agency authorized to obtain confidential information;

(4) the personal representative of the member's or former member's estate;

(5) another person if the person has

(A) written authorization for release from the member or former member, the member's named beneficiary, or the personal representative of the member's or former member's estate; or

(B) a court order or subpoena to secure the information.

(d) The name and address of a living person who is a member or former member of a state retirement system may be released to a retirement organization representing persons receiving benefits under a state retirement system if the retirement organization is affiliated with an organization representing employees of the employer under AS 23.40.070--23.40 .260 (Public Employment Relations Act).

(e) In this section, "state retirement system" means the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, the retirement system for members of the national guard under AS 26.05.222 --26.05.229, the public employees' retirement system under AS 39.35, or the elected public officers retirement system under former AS 39.37.

CREDIT(S)

SLA 2000, ch. 68, § 1.

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Westlaw
AS § 43.82.310

AK
STATS
relating to
Confidentiality

Page 1

West's Alaska Statutes Annotated Currentness
Title 43. Revenue and Taxation
Chapter 82. Alaska Stranded Gas Development Act
Article 4. Requests for **Information; Confidentiality; Disclosure of Information**
→ § 43.82.310. **Disclosure of information; confidentiality**

(a) An applicant may request **confidential** treatment of **information** that the applicant provides under AS 43.82.300 by clearly identifying the **information** and the reasons supporting the request for **confidential** treatment. The commissioner of revenue or the commissioner of natural resources, as appropriate, shall keep the **information confidential** until the commissioner determines whether the requirements of (b) of this section are met. If the commissioner of revenue or the commissioner of natural resources has not made a determination under (b) of this section within 14 days after receiving a request for **confidential** treatment, the request is **considered** denied. If the appropriate commissioner determines that the **information** does not meet the requirements of (b) of this section or if the commissioner fails to make a determination within 14 days, the commissioner shall return the **information** and any copies of it at the request of the applicant. If the commissioner of revenue or the commissioner of natural resources, as appropriate, returns **information** under this subsection, the commissioner shall cease review of the application or cease contract development under AS 43.82.200--43.82.270, as appropriate, unless the commissioner determines that the returned **information** is unnecessary to make a determination on the application or to develop contract terms under AS 43.82.200--43.82.270.

(b) If requested by the applicant, **information** provided to the commissioner of revenue or the commissioner of natural resources under AS 43.82.300 shall be kept **confidential** if the commissioner receiving the **information** determines, upon an adequate showing by the applicant, that the **information**

- (1) is a trade secret or other proprietary research, development, or commercial **information** that the applicant treats as **confidential**;
- (2) affects the applicant's competitive position; and
- (3) has commercial value that may be significantly diminished by public disclosure or that public disclosure is not in the long-term fiscal interests of the state.

(c) **Information** determined to be **confidential** under (b) of this section is **confidential** under that subsection only so long as is necessary to protect the competitive position of the applicant, to prevent the significant diminution of the commercial value of the **information**, or to protect the long-term fiscal interests of the state. The commissioner of revenue or the commissioner of natural resources, as appropriate, may not release **information** that the commissioner has previously determined to be **confidential** under (b) of this section without providing the applicant notice and an opportunity to be heard.

(d) Notwithstanding the limitation in (c) of this section, the Department of Revenue and the Department of Nat-

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ural Resources may provide to one another, to the Department of Law, to the legislature, and to the Office of the Governor any **information** provided under AS 43.82.300 relevant to the implementation of this chapter or to the enforcement of state or federal laws. **Information** that is exchanged under this subsection that was determined to be **confidential** under (b) of this section remains **confidential** except as provided in (c) of this section. The portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, the legislature, and the Office of the Governor that reflect, incorporate, or analyze **information** that is determined to be **confidential** under (b) of this section are not public records except as provided in (c) of this section.

(e) Notwithstanding the limitation in (c) of this section, **information** that is determined to be **confidential** under (b) of this section shall be disclosed on request by the commissioner of revenue, the commissioner of natural resources, or the attorney general to a legislator; to the legislative auditor; and, as directed by the chair or vice-chair of the Legislative Budget and Audit Committee, to the director of legislative finance, to the permanent employees of those divisions who are responsible for evaluating a contract under AS 43.82.020, and to agents or contractors of the legislative auditor or the director of legislative finance who are engaged to evaluate a contract under AS 43.82.020. Information that is determined to be confidential under (b) of this section may also be disclosed by the commissioner of revenue or the commissioner of natural resources to an independent contractor under AS 43.82.240 or to a municipal advisory group established under AS 43.82.510. Before **confidential information** is disclosed under this subsection, the person receiving the **information** must sign an appropriate **confidentiality** agreement.

(f) If the commissioner of revenue chooses to develop a contract under AS 43.82.020, the portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, and a municipal advisory group established under AS 43.82.510 that reflect, incorporate, or analyze information that is relevant to the development of the position or strategy of the commissioner of revenue, the commissioner of natural resources, or the attorney general with respect to a particular provision that may be incorporated into the contract are not public records until the commissioner of revenue gives public notice under AS 43.82.410 of the commissioner's preliminary findings and determination under AS 43.82.400. Nothing in this subsection

(1) makes a record or file of the Department of Revenue, the Department of Natural Resources, or the Department of Law a public record that otherwise would not be a public record under AS 40.25.100--40.25.220;

(2) affects the confidentiality provisions of (a)--(e) of this section; or

(3) abridges a privilege recognized under the laws of this state, whether at common law or by statute or by court rule.

CREDIT(S)

SLA 1998, ch. 104, § 3.

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AS § 43.82.310

Page 3

Taxation ↪ 2367, 3519, 3682.

Westlaw Key Number Searches: 371k2367; 371k3519; 371k3682.

AS § 43.82.310, AK ST § 43.82.310

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AS § 44.88.215

Page 1

West's Alaska Statutes Annotated Currentness

Title 44. State Government

Chapter 88. Alaska Industrial Development and Export Authority (Refs & Annos)

Article 4. General Administrative Provisions

→ § 44.88.215. Confidentiality of records and information

(a) In order to promote the purposes of this chapter, unless the records or **information** were a matter of public record before submittal to the authority, the following records and **information** shall be kept **confidential** if the person supplying the records or **information** or the project, bond, loan, or guarantee applicant or borrower requests **confidentiality** and makes an adequate showing to the executive director of the authority that the records or **information** are

- (1) income tax returns;
- (2) financial statements, profit-and-loss statements, and cash flow projections, except the **information** required by the authority to calculate debt service coverage on the loan;
- (3) financial business plans;
- (4) credit reports from consumer reporting agencies and other credit **information** obtained from banks, creditors, or other credit reporting entities;
- (5) trade secrets, including **confidential** proprietary **information** and **confidential information** about products, pricing, or manufacturing or business processes;
- (6) appraisals, except the name of the appraiser, the date of the appraisal, and the fair market value determined for the property appraised;
- (7) market surveys and marketing strategy **information**; or
- (8) any **information** required to be kept **confidential** by a federal law or regulation or by state law.

(b) **Information** compiled by the authority from **information** described in (a) of this section shall be kept **confidential** unless disclosure is authorized by the person supplying the **information** and by the project, bond, loan, or guarantee applicant or borrower.

(c) The records and **information** that the executive director of the authority determines to be **confidential** under (a) or (b) of this section are not public records under AS 40.25.110--40.25.220.

(d) Nothing in this section shall prevent a legislator from reviewing **information** otherwise **confidential** under this section if the legislator has a valid legislative purpose for reviewing the **information** and if the legislator agrees to maintain the **confidentiality** of the **information**.

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AS § 44.88.215

Page 2

CREDIT(S)

SLA 1998, ch. 109, § 8. Amended by SLA 2010, ch. 71, §§ 5, 6, eff. June 12, 2010.

HISTORICAL AND STATUTORY NOTES

In 2010, “**Confidentiality of records and information**” was substituted for “**Confidentiality of information**” in the section title by the revisor.

AS § 44.88.215, AK ST § 44.88.215

Current through the 2010 Second Regular Session of the 26th Legislature

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AS § 46.03.311

Page 1

C

West's Alaska Statutes Annotated Currentness
Title 46. Water, Air, Energy, and Environmental Conservation
 Chapter 03. Environmental Conservation
 Article 4. Radiation and Hazardous Waste Protection
 → § 46.03.311. Public records

(a) Permits, permit applications, records, reports, and **information** and documentation obtained under AS 46.03.302 - 46.03.308 are available to the public for inspection and copying. However, upon a showing satisfactory to the commissioner that a record, report, permit, application, or **information** would, if made public, divulge methods or processes entitled to protection as trade secrets, the commissioner shall treat the record, report, permit, application, or **information** as **confidential**.

(b) **Information** that is **confidential** may be transmitted under a continuing restriction of **confidentiality** to other officers, employees, or authorized representatives of the state or of the United States if

(1) the person responsible for furnishing the record, report, permit, application, or **information** to which the **information** pertains is informed at least two weeks before the transmittal; and

(2) the **information** has been acquired by the department under the provisions of AS 46.03.296 - 46.03.311.

(c) This section does not limit the department's authority to release **confidential information** during emergency situations.

CREDIT(S)

SLA 1981, ch. 93, § 10.

AS § 46.03.311, AK ST § 46.03.311

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Westlaw

AS § 46.14.520

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 46. Water, Air, Energy, and Environmental Conservation

Chapter 14. Air Quality Control

Article 5. Miscellaneous Provisions

→ § 46.14.520. Confidentiality of trade secrets

Records, reports, and **information**, and parts of records, reports, and **information**, other than emission data, in the department's possession or control are **considered confidential** records and shall be kept **confidential** and in separate files if the owner and operator have certified under oath to the department or authorized local program that

(1) public disclosure would tend to affect adversely the owner's and operator's competitive position; and

(2) the records, reports, or **information**, or parts of the records, reports, or **information**, would divulge production figures, sales figures, processes, production techniques, or financial data of the owner and operator that are entitled to protection as trade secrets under AS 45.50.910 - 45.50.945 (Alaska Uniform Trade Secrets Act).

CREDIT(S)

SLA 1993, ch. 74, § 2.

AS § 46.14.520, AK ST § 46.14.520

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AS § 47.30.590

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 47. Welfare, Social Services and Institutions

Chapter 30. Mental Health

Article 5. Community Mental Health Services Act

→ § 47.30.590. **Patient rights and the confidential nature of records and information**

(a) The department shall adopt regulations to assure patient rights and to safeguard the **confidential** nature of records and **information** about the recipients of services provided under this chapter. The regulations must require that entities identified in AS 47.30.540(b) develop and include in any plan submitted for approval adequate provisions for safeguarding **confidential information**. The regulations must provide for disclosure of **confidential information** to parents or guardians, to mental health professionals providing services to a recipient, and to other appropriate service agencies when it is in the defined best interests of the patient.

(b) Notwithstanding (a) of this section, the department is authorized to review, obtain, and copy **confidential** and other records and **information** about the clients of services requested or furnished under AS 47.30.520--47.30.620 to evaluate compliance with those statutes. The department may obtain the records and **information** regarding clients from the client or directly from an entity designated by the department under AS 47.30.520--47.30.620 that furnished those services. Records obtained by the department under this subsection are medical records, shall be handled **confidentially**, and are exempt from public inspection and copying under AS 40.25.110--40.25.120.

CREDIT(S)

SLA 1975, ch. 121, § 1; SLA 1991, ch. 66, § 34; SLA 2001, ch. 74, § 3.

LIBRARY REFERENCES

Health ☞ 257, 582.

Mental Health ☞ 20, 21.

Westlaw Key Number Searches: 198Hk257; 198Hk582; 257Ak20; 257Ak21.

C.J.S. Mental Health §§ 14 to 20.

RESEARCH REFERENCES

Treatises and Practice Aids

Investigating Employee Conduct App E2, **Confidentiality** of Medical Records.

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AS § 47.30.590

Page 2

AS § 47.30.590, AK ST § 47.30.590

Current through the 2010 Second Regular Session of the 26th Legislature

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Westlaw

AS § 47.10.090

Page 1

C

West's Alaska Statutes Annotated Currentness
 Title 47. Welfare, Social Services and Institutions
 Chapter 10. Children in Need of Aid
 Article 1. Children's Proceedings
 → § 47.10.090. **Court records**

- (a) The court shall make and keep records of all cases brought before it.
- (b) Repealed by SLA 1996, ch. 59, § 55, eff. Sept. 10, 1996.
- (c) Within 30 days after the date of a child's 18th birthday or, if the court retains jurisdiction of a child past the child's 18th birthday, within 30 days after the date on which the court releases jurisdiction over the child, the court shall order all the court's official records pertaining to that child in a proceeding under this chapter sealed. A person may not use these sealed records unless authorized by order of the court upon a finding of good cause.
- (d) The name or picture of a child under the jurisdiction of the court may not be made public in connection with the child's status as a child in need of aid unless authorized by order of the court or unless to implement the permanency plan for a child after all parental rights of custody have been terminated. This subsection does not prohibit the release of aggregate information for statistical or other informational purposes if the identity of any particular person is not revealed by the release.
- (e) The court's official records under this chapter may be inspected only with the court's permission and only by persons having a legitimate interest in them. A foster parent is considered to have a legitimate interest in those portions of the court's records relating to a child who is placed by the department with the foster parent or who the department proposes for placement with the foster parent.

CREDIT(S)

SLA 1957, art I, ch. 145, § 10(3)(4); SLA 1972, ch. 124, § 1; SLA 1975, ch. 90, § 1; SLA 1977, ch. 63, § 20; SLA 1988, ch. 130, § 4; SLA 1989, ch. 50, § 56; SLA 1994, ch. 98, § 1; SLA 1994, ch. 113, § 12; SLA 1996, ch. 59, §§ 29--31, 55; SLA 1998, ch. 99, § 34; SLA 2005, ch. 64, §§ 18, 19.

HISTORICAL AND STATUTORY NOTES

SLA 2005, ch. 64, § 62 provides:

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AS § 47.10.090

Page 2

“Applicability. (a) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure, made by secs. 51 and 52 of this Act, apply to hearings that are conducted on or after July 1, 2005.

“(b) Sections 9--11, 14, 18, 19, 22--27, 51, 52, and 55 of this Act apply to all proceedings and hearings conducted on or after July 1, 2005.

“(c) Sections 9, 10, 14, and 19--27 of this Act apply to all **information**, records, and files created on or after July 1, 2005; however, if a file contains **information** and records that were created before July 1, 2005, that **information** and those records retain the **confidentiality** that they had under the law on June 30, 2005.”


SLA 2005, ch. 64, § 65(e) provides:

“(e) Sections 9 and 10 of this Act, AS 47.10.080(u), enacted by sec. 14 of this Act, and secs. 19 and 22--27 of this Act, take effect only if secs. 51, 52, 53, and 61 of this Act receive the two-thirds majority vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.”

CROSS REFERENCES

Delinquent minors, court records, see § 47.12.300.


LIBRARY REFERENCES

Infants  133.
Westlaw Key Number Search: 211k133.
C.J.S. Infants §§ 43, 71 to 95.

NOTES OF DECISIONS

Confidentiality, generally 1
Disclosures between state agencies 3
Discovery of privileged **information** 2
Judicial discretion 4
Orders to release records 5

1. **Confidentiality**, generally

Guarantee of **confidentiality** concerning juvenile delinquency proceedings did not preclude court's consideration of unsolicited letters from victims' relatives; **confidentiality** provisions are aimed at protecting privacy of minors and are not designed to insulate court from relevant **information** submitted by members of the public. AS 47.10.090(b); Delinquency Rule 2(g). J.C.W. v. State, 1994, 880 P.2d 1067. Infants  203

Admission of social workers' testimony of statements by child abuse victims and victims' mother in connection with child in need of aid action initiated after State learned of accusations of sexual abuse against children's stepfather, was not plain error in prosecution of father for sexual abuse of minor, despite claim that testimony vi-

olated policy of confidentiality of those proceedings; neither defendant, his wife, nor children objected to admission of testimony in trial, and testimony in question was relevant to determining whether children's original charges of sexual abuse were accurate. AS 47.10.070, 47.10.090(a). Clifton v. State, 1988, 758 P.2d 1279. Criminal Law ☞ 1036.2

2. Discovery of privileged information

Defendant apparently had "legitimate interest" in minor victim's **confidential** child in need of aid records and division of family youth services records, and, thus, statute permitting disclosure of **confidential** records only to persons with legitimate interest in them did not bar defendant's access to records allegedly indicating victim's motive to fabricate. AS 47.10.090(a). Sledge v. State, 1988, 763 P.2d 1364. Privileged Communications And Confidentiality ☞ 376

Defendant was entitled to discover evidence that indicated minor victim's bias or motive to fabricate, that was relevant, and that was contained in victim's child in need of aid file and her division of family and youth services file. AS 47.10.090(a). Sledge v. State, 1988, 763 P.2d 1364. Privileged Communications And Confidentiality ☞ 376

3. Disclosures between state agencies

The Department of Health and Social Services, Division of Family and Youth Services does not have legal authority to disclose to the Department of Public Safety on a monthly basis certain **information** concerning Youth Services clients disclosure of **information** under current law must be on a case-by-case basis. Alaska Op.Atty.Gen. 665-94-0170, (July 8, 1994) 1994 WL 562172.

4. Judicial discretion

Denying father access to records of child-in-need-of-aid (CINA) investigation involving maternal grandmother 18 years earlier was not abuse of discretion in father's action to modify custody of his two sons, which had been granted to maternal grandparents; CINA investigation was remote in time, and father did not allege any abuse after that time. AS 25.20.110, 47.10.090(c). C.R.B. v. C.C. (1998) Alaska, 959 P.2d 375. Infants ☞ 133

Policy of confidentiality in child in need of aid proceedings is not absolute, rather, court has discretion to disclose records. AS 47.10.070, 47.10.090(a). Clifton v. State, 1988, 758 P.2d 1279. Infants ☞ 133

5. Orders to release records

Superior court's records release order did not violate statute governing child in need of aid proceeding or regulations promulgated thereunder as long as order was narrowly construed to permit sharing of records among parties and agencies involved and to require any recipient of released **information** to maintain **confidentiality** standards comparable to those found in statute and regulations. AS 47.10.090, 47.10.090(a). Matter of A.B., 1990, 791 P.2d 615. Infants ☞ 133; Infants ☞ 201

AS § 47.10.090

Page 4

AS § 47.10.090, AK ST § 47.10.090

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AS § 47.10.093

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 47. Welfare, Social Services and Institutions

Chapter 10. Children in Need of Aid

Article 1. Children's Proceedings

→ § 47.10.093. Disclosure of agency records

(a) Except as permitted in AS 47.10.092 and in (b)--(g) and (i)--(l) of this section, all information and social records pertaining to a child who is subject to this chapter or AS 47.17 prepared by or in the possession of a federal, state, or municipal agency or employee in the discharge of the agency's or employee's official duty are privileged and may not be disclosed directly or indirectly to anyone without a court order.

(b) A state or municipal agency or employee shall disclose appropriate **confidential information** regarding a case to

(1) a guardian ad litem appointed by the court;

(2) a person or an agency requested by the department or the child's legal custodian to provide consultation or services for a child who is subject to the jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of the consultation or services;

(3) an out-of-home care provider as necessary to enable the out-of-home care provider to provide appropriate care to the child, to protect the safety of the child, and to protect the safety and property of family members and visitors of the out-of-home care provider;

(4) a school official as necessary to enable the school to provide appropriate counseling and support services to a child who is the subject of the case, to protect the safety of the child, and to protect the safety of school students and staff;

(5) a governmental agency as necessary to obtain that agency's assistance for the department in its investigation or to obtain physical custody of a child;

(6) a law enforcement agency of this state or another jurisdiction as necessary for the protection of any child or for actions by that agency to protect the public safety;

(7) a member of a multidisciplinary child protection team created under AS 47.14.300 as necessary for the

performance of the member's duties;

(8) the state medical examiner under AS 12.65 as necessary for the performance of the duties of the state medical examiner;

(9) a person who has made a report of harm as required by AS 47.17.020 to inform the person that the investigation was completed and of action taken to protect the child who was the subject of the report;

(10) the child support services agency established in AS 25.27.010 as necessary to establish and collect child support for a child who is a child in need of aid under this chapter;

(11) a parent, guardian, or caregiver of a child or an entity responsible for ensuring the safety of children as necessary to protect the safety of a child;

(12) a review panel established by the department for the purpose of reviewing the actions taken by the department in a specific case; and

(13) the University of Alaska under the Alaska higher education savings program for children established under AS 47.14.400, but only to the extent that the **information** is necessary to support the program and only if the **information** released is maintained as a **confidential** record by the University of Alaska.

(c) A state or municipal law enforcement agency shall disclose **information** regarding a case that is needed by the person or agency charged with making a preliminary investigation for the **information** of the court under AS 47.10.020.

(d), (e) Repealed by SLA 1996, ch. 59, § 55, eff. Sept. 10, 1996.

(f) The department may release to a person with a legitimate interest **confidential information** relating to children not subject to the jurisdiction of the court under AS 47.10.010.

(g) The department and affected law enforcement agencies shall work with school districts and private schools to develop procedures for the disclosure of confidential information to a school official under (b)(4) of this section. The procedures must provide a method for informing the principal or the principal's designee of the school that the student attends as soon as it is reasonably practicable.

(h) Repealed by SLA 1996, ch. 59, § 55, eff. Sept. 10, 1996.

(i) The commissioner of health and social services or the commissioner's designee or the commissioner of administration or the commissioner's designee, as appropriate, may disclose to the public, upon request, confidential information, as set out in (j) of this section, when

- (1) the parent or guardian of a child who is the subject of one or more reports of harm under AS 47.17 has made a public disclosure concerning the department's involvement with the family;
- (2) the alleged perpetrator named in one or more reports of harm under AS 47.17 has been charged with a crime concerning the alleged abuse or neglect; or
- (3) abuse or neglect has resulted in the fatality or near fatality of a child who is the subject of one or more reports of harm under AS 47.17.
- (j) The department may publicly disclose information pertaining to a child or an alleged perpetrator named in a report of harm described under (i) of this section, or pertaining to a household member of the child or the alleged perpetrator, if the information relates to a determination, if any, made by the department regarding the nature and validity of a report of harm under AS 47.17 or to the department's activities arising from the department's investigation of the report. The commissioner or the commissioner's designee
- (1) shall withhold disclosure of the child's name, picture, or other information that would readily lead to the identification of the child if the department determines that the disclosure would be contrary to the best interests of the child, the child's siblings, or other children in the child's household; or
- (2) after consultation with a prosecuting attorney, shall withhold disclosure of information that would reasonably be expected to interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial in a criminal proceeding.
- (k) Except for a disclosure made under (i) of this section, a person to whom disclosure is made under this section may not disclose **confidential information** about the child or the child's family to a person not authorized to receive it.
- (l) The Department of Health and Social Services and the Department of Administration shall adopt regulations to implement and interpret the duties of the respective department under this section, including regulations governing the release of **confidential information** and identifying a sufficient legitimate interest under (f) of this section.
- (m) A person may not bring an action for damages against the state, the commissioner, or the commissioner's designee based on the disclosure or nondisclosure of **information** under (i) of this section except for civil damages resulting from gross negligence or reckless or intentional misconduct.
- (n) A person who discloses **confidential information** in violation of this section is guilty of a class B misdemeanor.
- (o) In this section, "school" means a public or private elementary or secondary school.

AS § 47.10.093

Page 4

CREDIT(S)

SLA 1994, ch. 113, § 13; SLA 1995, ch. 32, §§ 1, 2; SLA 1996, ch. 59, §§ 32--34, 55; SLA 1997, ch. 94, § 4; SLA 1998, ch. 99, § 36; SLA 2003, ch. 35, § 69; SLA 2004, ch. 99, § 31; SLA 2005, ch. 64, §§ 22--27; SLA 2006, ch. 20, §§ 5, 6, eff. May 4, 2006. Amended by SLA 2007, ch. 58, § 2, eff. Oct. 15, 2007.

HISTORICAL AND STATUTORY NOTES

SLA 2005, ch. 64, § 62 provides:

“Applicability. (a) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure, made by secs. 51 and 52 of this Act, apply to hearings that are conducted on or after July 1, 2005.

“(b) Sections 9--11, 14, 18, 19, 22--27, 51, 52, and 55 of this Act apply to all proceedings and hearings conducted on or after July 1, 2005.

“(c) Sections 9, 10, 14, and 19--27 of this Act apply to all **information**, records, and files created on or after July 1, 2005; however, if a file contains **information** and records that were created before July 1, 2005, that **information** and those records retain the **confidentiality** that they had under the law on June 30, 2005.”

SLA 2005, ch. 64, § 65(e) provides:

“(e) Sections 9 and 10 of this Act, AS 47.10.080(u), enacted by sec. 14 of this Act, and secs. 19 and 22--27 of this Act, take effect only if secs. 51, 52, 53, and 61 of this Act receive the two-thirds majority vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.”

SLA 2007, ch. 58 inserted par. (13) in subsec. (b).

CROSS REFERENCES


Attempt, classification of offenses, see § 11.31.100.
 Classification of offenses, see § 11.81.250.
 Delinquent minors, court records, see § 47.12.310.
 Fines, see § 12.55.035.
 Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.
 Misdemeanors, sentences of imprisonment, see § 12.55.135.
 Offenses defined by statute, see § 11.81.220.
 Prior convictions, effect on sentencing, see § 12.55.145.
 Restitution and compensation, see § 12.55.045.
 Victims of crimes, rights, see § 12.61.010 et seq.

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AS § 47.10.093

Page 5

Infants  133.
Westlaw Key Number Search: 211k133.
C.J.S. Infants §§ 43, 71 to 95.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

AS 47.10.093(f) authorizes the office of children's services to release information concerning minor children for whom state court proceedings have not been initiated to any 'person with a legitimate interest' in the information and tribes are 'persons' within the meaning of this statute. Alaska Op.Atty.Gen. 661-04-0467, (Oct. 1, 2004) 2004 WL 2337177.

AS § 47.10.093, AK ST § 47.10.093

Current through the 2010 Second Regular Session of the 26th Legislature

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West's Alaska Statutes Annotated Currentness
Title 47. Welfare, Social Services and Institutions
 Chapter 12. Delinquent Minors
 Article 2. Information and Records
 → § 47.12.300. Court records

- (a) The court shall make and keep records of all cases brought before it.
- (b) The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Administration if the court imposes a license revocation under AS 28.15.185.
- (c) Except when disclosure of the name of a minor is authorized or required by this chapter and except as provided in (g) of this section, the name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent unless authorized by order of the court.
- (d) Except as provided in (f) of this section, within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor, the court shall order all the court's official records pertaining to that minor in a proceeding under this chapter sealed, as well as records of all driver's license proceedings under AS 28.15.185, criminal proceedings against the minor, and punishments assessed against the minor. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The provisions of this subsection relating to the sealing of records do not apply to records of traffic offenses.
- (e) The court's official records prepared under this chapter and not made public under this section are **confidential** and may be inspected only with the court's permission and only by persons having a legitimate interest in them. A foster parent is **considered** to have a legitimate interest in those portions of the court's official records relating to a child who is already placed with the foster parent or who is recommended for placement with the foster parent. A person with a legitimate interest in the inspection of a confidential record maintained by the court also includes a victim who suffered physical injury or whose real or personal property was damaged as a result of an offense that was the basis of an adjudication or modification of disposition. If the victim knows the identity of the minor, identifies the minor or the offense to the court, and certifies that the **information** is being sought to **consider** or support a civil action against the minor or against the minor's parents or guardian under AS 09.65.255, the court shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the following records and information in connection with the civil action:
- (1) a petition filed under AS 47.12.040(a) seeking to have the court declare the minor a delinquent;

- (2) a petition filed under AS 47.12.120 seeking to have the court modify or revoke the minor's probation;
- (3) a petition filed under AS 47.12.100 requesting the court to find that a minor is not amenable to treatment under this chapter and that results in closure of a case under AS 47.12.100(a); and
- (4) a court judgment or order entered under this chapter that disposes of a petition identified in (1)--(3) of this subsection.

(f) A person who has been tried as an adult under AS 47.12.100(a) or a person whose records have been made public under (g) of this section, or the department on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult or five years after a disposition was entered for an offense for which the records were made public under (g) of this section. If the superior court finds that its order has had its intended rehabilitative effect and further finds that the person has fulfilled all orders of the court entered under AS 47.12.120, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The court may not, under this subsection, seal records of a criminal proceeding

(1) initiated against a person if the court finds that the person has not complied with a court order made under AS 47.12.120; or

(2) commenced under AS 47.12.030(a) unless the minor has been acquitted of all offenses with which the minor was charged or unless the most serious offense of which the minor was convicted was not an offense specified in AS 47.12.030(a).

(g) When a district attorney has elected to seek imposition of a dual sentence and a petition has been filed under AS 47.12.065, or when a minor agrees as part of a plea agreement to be subject to dual sentencing, all court records shall be open to the public except for predisposition reports, psychiatric and psychological reports, and other documents that the court orders to be kept **confidential** because the release of the documents could be harmful to the minor or could violate the constitutional rights of the victim or other persons.

(h) A person who discloses **confidential information** in violation of this section is guilty of a class B misdemeanor.

CREDIT(S)

SLA 1996, ch. 59, § 46; SLA 1997, ch. 64, § 3; 1997 E.O. No. 99 § 76; SLA 1998, ch. 107, §§ 35--39; SLA

1999, ch. 40, § 9.

CROSS REFERENCES

Application of state procurement code, see § 36.30.850.
 Attempt, classification of offenses, see § 11.31.100.
 Children in need of aid, court records, see § 47.10.090.
 Classification of offenses, see § 11.81.250.
 Fines, see § 12.55.035.
 Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.
 Misdemeanors, sentences of imprisonment, see § 12.55.135.
 Offenses defined by statute, see § 11.81.220.
 Prior convictions, effect on sentencing, see § 12.55.145.
 Restitution and compensation, see § 12.55.045.
 Victims of crimes, rights, see § 12.61.010 et seq.

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Infants ↪ 133.
 Westlaw Key Number Search: 211k133.
 C.J.S. Infants §§ 43, 71 to 95.

NOTES OF DECISIONS

Judicial discretion 3
 Parental access to records 2
 Presentence investigator access to records 1
 Release of record order 4
 Victim impact statements 5

1. Presentence investigator access to records

A pre-sentence investigator is not barred from examining or relying on Department of Health and Social Services records pertaining to a defendant's prior acts of delinquency when those acts were informally adjusted. AS 47.12.300, 47.12.310(a); Delinquency Rule 27(a). *McCoy v. State* (2002) Alaska App., 80 P.3d 755, on rehearing 80 P.3d 757, hearing denied. Sentencing And Punishment ↪ 288

Judge could rely on hearsay statements from defendant's presentence report when imposing sentence for assault; the statements were verified since defendant's father-in-law was the source of the statements, the statements involved previous incidents of domestic violence involving defendant and the difficulties defendant's children had when defendant was within the home, the data provided by defendant's father-in-law was based on first-hand knowledge or was attributable to defendant's wife or his children. AS 47.12.300(d); Rules Crim.Proc., Rule 32.1(b)(1); Delinquency Rule 27(a)(1). *McCoy v. State* (2002) Alaska App., 80 P.3d 751, rehearing denied 80 P.3d 755, on rehearing 80 P.3d 757. Sentencing And Punishment ↪ 284

Presentence investigator in criminal court could review and use information contained in defendant's juvenile probation file without first obtaining special permission from the Superior Court; delinquency rule provided that a probation officer could review delinquency proceedings records while preparing a presentence report. AS 47.12.300; Delinquency Rule 27(a)(1). *McCoy v. State* (2002) Alaska App., 80 P.3d 751, rehearing denied 80 P.3d 755, on rehearing 80 P.3d 757. Infants ⚙️ 133; Sentencing And Punishment ⚙️ 288

A probation officer who is preparing a pre-sentence report can examine the defendant's juvenile file and can include information about the defendant's informal contacts with the juvenile justice system without first seeking case-specific permission from the superior court, despite statute, which declares that all agency records pertaining to a minor are privileged and may not be disclosed without a court order. AS 47.12.310; Delinquency Rule 27(a)(1). *Hart v. State* (2003) Alaska App., 75 P.3d 1073. Infants ⚙️ 133; Privileged Communications And Confidentiality ⚙️ 376; Sentencing And Punishment ⚙️ 288

2. Parental access to records

Denying father access to records of child-in-need-of-aid (CINA) investigation involving maternal grandmother 18 years earlier was not abuse of discretion in father's action to modify custody of his two sons, which had been granted to maternal grandparents; CINA investigation was remote in time, and father did not allege any abuse after that time. AS 25.20.110, 47.10.090(c). *C.R.B. v. C.C.* (1998) Alaska, 959 P.2d 375. Infants ⚙️ 133

3. Judicial discretion

Policy of confidentiality in child in need of aid proceedings is not absolute, rather, court has discretion to disclose records. AS 47.10.070, 47.10.090(a). *Clifton v. State*, 1988, 758 P.2d 1279. Infants ⚙️ 133

4. Release of record order

Superior court's records release order did not violate statute governing child in need of aid proceeding or regulations promulgated thereunder as long as order was narrowly construed to permit sharing of records among parties and agencies involved and to require any recipient of released **information** to maintain **confidentiality** standards comparable to those found in statute and regulations. AS 47.10.090, 47.10.090(a). *Matter of A.B.*, 1990, 791 P.2d 615. Infants ⚙️ 133; Infants ⚙️ 201

5. Victim impact statements

Information that court may **consider** as discretionary matter in conducting disposition hearing in juvenile delinquency case is not limited by statute requiring that court be given predisposition report, victim impact statement, and "any further **information**" requested by court or by Delinquency Rule listing **information** that must be made available. AS 47.10.081(a); Delinquency Rule 22(a)(1). *J.C.W. v. State*, 1994, 880 P.2d 1067. Infants ⚙️ 203

Court conducting disposition hearing in juvenile delinquency case was authorized to consider unsolicited letters from victims' relatives absent showing that consideration of letters unduly delayed or interfered with purpose

AS § 47.12.300

Page 5

and character of disposition hearing. AS 47.10.081(a); Delinquency Rule 22(a)(1). J.C.W. v. State, 1994, 880 P.2d 1067. Infants ↩ 203

AS § 47.12.300, AK ST § 47.12.300

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West's Alaska Statutes Annotated Currentness
Title 47. Welfare, Social Services and Institutions
 ▣ Chapter 12. Delinquent Minors
 ▣ Article 2. Information and Records
 → § 47.12.310. Agency records

(a) Except as specified in AS 47.12.315, 47.12.320, and (b)-(g) of this section, all information and social records pertaining to a minor who is subject to this chapter or AS 47.17 prepared by or in the possession of a federal, state, or municipal agency or employee in the discharge of the agency's or employee's official duty, including driver's license actions under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without a court order.

(b) A state or municipal agency or employee shall disclose

(1) information regarding a case to a federal, state, or municipal law enforcement agency for a specific investigation being conducted by that agency;

(2) appropriate information regarding a case to

(A) a guardian ad litem appointed by the court;

(B) a person or an agency requested by the department or the minor's legal custodian to provide consultation or services for a minor who is subject to the jurisdiction of the court under this chapter as necessary to enable the provision of the consultation or services;

(C) school officials as may be necessary to protect the safety of the minor who is the subject of the case and the safety of school students and staff or to enable the school to provide appropriate counseling and supportive services to meet the needs of a minor about whom information is disclosed;

(D) a governmental agency as may be necessary to obtain that agency's assistance for the department in its investigation or to obtain physical custody of a minor;

(E) a law enforcement agency of this state or another jurisdiction as may be necessary for the protection, rehabilitation, or supervision of any minor or for actions by that agency to protect the public safety;

(F) a victim or to the victim's insurance company as may be necessary to inform the victim or the insurance company about the arrest of the minor, including the minor's name and the names of the minor's parents, copies of reports, or the disposition or resolution of a case involving a minor;

(G) the state medical examiner under AS 12.65 as may be necessary to perform the duties of the state medical examiner;

(H) foster parents or relatives with whom the child is placed by the department as may be necessary to enable the foster parents or relatives to provide appropriate care for the child who is the subject of the case, to protect the safety of the child who is the subject of the case, and to protect the safety and property of family members and visitors of the foster parents or relatives;

(I) the Department of Law or its agent for use and subsequent release if necessary for collection of an order of restitution on behalf of the recipient;

(J) the Violent Crimes Compensation Board established in AS 18.67.020 for use in awarding compensation under AS 18.67.080; and

(K) a state, municipal, or federal agency of this state or another jurisdiction that has the authority to license adult or children's facilities and services; and

(3) to the University of Alaska under the Alaska higher education savings program for children established under AS 47.14.400 information that is necessary to support the program, but only if the information released is maintained as a confidential record by the University of Alaska.

(c) A state or municipal law enforcement agency

(1) shall disclose information regarding a case that is needed by the person or agency charged with making a preliminary investigation for the information of the court under this chapter;

(2) may disclose to the public information regarding a criminal offense in which a minor is a suspect, victim, or witness if the minor is not identified by the disclosure;

(3) may disclose to school officials information regarding a case as may be necessary to protect the safety of school students and staff or to enable the school to provide appropriate counseling and supportive services to meet the needs of a minor about whom information is disclosed;

(4) may disclose to the public information regarding a case as may be necessary to protect the safety of the public; and

(5) may disclose to a victim or to the victim's insurance company information, including copies of reports, as necessary for civil litigation or insurance claims pursued by or against the victim.

(d) Upon request of a victim, the department shall make every reasonable effort to notify the victim as soon as practicable, by telephone or in writing, when a delinquent minor is to be released from placement in a juvenile facility under AS 47.12.120(b)(1). The notice under this subsection must include the expected date of the delinquent minor's release, the geographic area in which the delinquent minor is required to reside, and other pertinent information concerning the delinquent minor's conditions of release that may affect the victim.

(e) A person may authorize the department to release information to the military or to a prospective employer about the existence of a delinquency adjudication against that person under this chapter and the offense on which it was based.

(f) The department may release to a person with a legitimate interest information relating to minors not subject to the jurisdiction of the court under this chapter. The department shall adopt regulations governing the release of information and identifying a sufficient legitimate interest.

(g) The department and affected law enforcement agencies shall work with school districts and private schools to develop procedures for the disclosure of information to school officials under (b)(2)(C) and (c)(3) of this section. The procedures must provide a method for informing the principal or the principal's designee of the school the student attends as soon as it is reasonably practicable.

(h) Notwithstanding (c)(3) of this section, a state or municipal law enforcement agency is not required to notify the appropriate school official of a school district or school under (c) of this section if the agency determines that notice would jeopardize an ongoing investigation.

(i) A state or municipal agency, other than a state or municipal law enforcement agency, or authorized employee may disclose to the public information regarding a case as may be necessary to protect the safety of the public provided the disclosure is authorized by regulations adopted by the department.

(j) In this section, "school" means a public or private elementary or secondary school.

(k) A person who discloses confidential information in violation of this section is guilty of a class B misdemeanor.

CREDIT(S)

SLA 1996, ch. 59, § 46; SLA 1997, ch. 64, §§ 4--7; SLA 1997, ch. 94, § 7; SLA 1998, ch. 99, § 46; SLA 1998, ch. 107, §§ 40, 41; SLA 2001, ch. 92, § 39; SLA 2002, ch. 47, § 1; SLA 2004, ch. 124, § 30. Amended by SLA 2007, ch. 58, § 3, eff. Oct. 15, 2007.

AS § 47.12.310

Page 4

Current through the 2010 Second Regular Session of the 26th Legislature

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AS § 47.30.590

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 47. Welfare, Social Services and Institutions

☞ Chapter 30. Mental Health

☞ Article 5. Community Mental Health Services Act

→ § 47.30.590. **Patient rights and the confidential nature of records and information**

(a) The department shall adopt regulations to assure patient rights and to safeguard the **confidential** nature of records and **information** about the recipients of services provided under this chapter. The regulations must require that entities identified in AS 47.30.540(b) develop and include in any plan submitted for approval adequate provisions for safeguarding **confidential information**. The regulations must provide for disclosure of **confidential information** to parents or guardians, to mental health professionals providing services to a recipient, and to other appropriate service agencies when it is in the defined best interests of the patient.

(b) Notwithstanding (a) of this section, the department is authorized to review, obtain, and copy **confidential** and other records and **information** about the clients of services requested or furnished under AS 47.30.520--47.30.620 to evaluate compliance with those statutes. The department may obtain the records and **information** regarding clients from the client or directly from an entity designated by the department under AS 47.30.520--47.30.620 that furnished those services. Records obtained by the department under this subsection are medical records, shall be handled **confidentially**, and are exempt from public inspection and copying under AS 40.25.110--40.25.120.

CREDIT(S)

SLA 1975, ch. 121, § 1; SLA 1991, ch. 66, § 34; SLA 2001, ch. 74, § 3.

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Health ☞ 257, 582.

Mental Health ☞ 20, 21.

Westlaw Key Number Searches: 198Hk257; 198Hk582; 257Ak20; 257Ak21.

C.J.S. Mental Health §§ 14 to 20.

RESEARCH REFERENCES

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Investigating Employee Conduct App E2, **Confidentiality** of Medical Records.

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AS § 47.30.590

Page 2

AS § 47.30.590, AK ST § 47.30.590

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Child in Need of Aid Rules, Rule 22

Page 1

C

West's Alaska Statutes Annotated Currentness

Alaska Court Rules

↳ Child in Need of Aid Rules (Refs & Annos)

↳ Part IX. Court Administration

→ **Rule 22. Confidentiality**

(a) Confidentiality of Records. The records of a child in need of aid proceeding are **confidential**. Only parties and their attorneys may have access to the court file except as otherwise authorized by statute or court order for good cause shown. Parties and their attorneys shall maintain the **confidentiality** of all **information** in the court's file. Other persons authorized access to the file are subject to such conditions as the court may set with notice to the parties.

(b) Foster Parent's Right to Review. A foster parent may have access to court records relating to a child whom the Department has placed with the foster parent or whom the Department proposes for placement. When a case involves more than one child, but the foster parent does not have custody of all the children in the case, the foster parent may have access only to those portions of the court records that relate to the child whom the Department has placed or proposed for placement with the foster parent. The foster parent must maintain the confidentiality of all parts of the record. For purposes of this rule, "foster parent" includes current and proposed foster parents.

(c) Child's Name or Picture. The name or picture of a child who is the subject of a CINA proceeding may not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization, or unless necessary to implement the permanency plan for the child after all parental rights of custody have been terminated.

CREDIT(S)

[Amended effective July 15, 1995; July 15, 1999; Order No. 1580 dated July 7, 2005, effective nunc pro tunc to July 1, 2005.]

NOTE

AS 47.10.092, added by ch. 98, § 2, SLA 1994, affects CINA Rule 22 by authorizing the parent or legal guardian of a minor subject to a proceeding under AS 47.10.010-.142 to disclose **confidential** or privileged **information** about the minor, including **information** lawfully obtained from a court file, to the governor, the lieutenant governor, a legislator, the ombudsman appointed under AS 24.55, the attorney general, and the commissioners of health and social services, administration, or public safety, or an employee of these persons, for review or use

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in their official capacities. A person to whom such disclosure is made may not disclose **confidential** or privileged **information** about the minor to a person not authorized to receive it.

Chapter 64, section 55, SLA 2005 (HB 53) amended Child in Need of Aid Rule 22. The change to CINA Rule 22 is adopted for the sole reason that the legislature has mandated the amendment. In addition, according to section 61(b) of the Act, sections 19 and 22-27 have the effect of changing CINA Rule 22 by allowing the disclosure of **confidential information** pertaining to a child, including allowing a child's name or picture to be made public in certain circumstances.

CROSS REFERENCES

AS 47.10.090; 25 U.S.C. § 1912(c).

PUBLISHER'S NOTE

Laws 1998, c. 99, §§ 34 and 35, which amended AS 47.10.090(e) and AS 47.10.092(a) respectively, amended Rule 22 "regarding access to, and disclosure of, **confidential information** pertaining to child-in-need-of-aid proceedings." Laws 1998, c. 99, § 78.

Child in Need of Aid Rule 22, AK R CINA Rule 22

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West's Alaska Statutes Annotated Currentness

Alaska Court Rules

▣ Rules of Civil Procedure

▣ Part XII. Special Proceedings

→ **Rule 90.1. Dissolution of Marriage, Divorce, and Legal Separation Actions****(a) Dissolution of Marriage.**

(1) *Commencement of Action.* An action for dissolution of marriage under AS 25.24.200-.260 shall be commenced by the filing of a petition in superior court containing the recitations required by statute. The petition may not be filed more than 60 days after the date of the signature of the first person signing the petition.

(2) *Verification.* The petition shall be signed and verified by both petitioners if the petition is filed by husband and wife together or by the petitioner filing the action if filed separately.

(3) *Form of Petition.* The petition may be filed on forms approved by the supreme court. Information may be inserted on the form in legible handwriting.

(b) Divorce Actions--Corroborating Witnesses Not Required. No corroborating witnesses as to legal residence shall be required in any divorce action unless ordered by the court; provided however, that the evidence of such residence shall be specific as to time, place, and manner of residence, and to the pertinent facts in the knowledge of the party attending to corroborate such residence.

(c) Hearing of Divorce and Dissolution Cases. Unless otherwise ordered upon good cause shown, no divorce or dissolution action shall be tried or heard on the merits within thirty days of the filing of the complaint.

(d) Divorce Actions--Discovery and Disclosure. Discovery and disclosure in divorce actions is governed by Civil Rule 26.1.

(e) Divorce Actions--Property Division Table. In divorce cases involving property division disputes, and unless otherwise ordered by the court, the parties shall file and serve the information required by this paragraph 5 days before trial is scheduled to begin. The required information consists of:

(1) a list, including a brief description of all assets and liabilities of the parties, whether owned jointly or individually;

(2) whether the party asserts each asset or liability is marital property, separate property of the husband, or separate property of the wife;

(3) the value of each asset and liability; and

(4) the proposed disposition, if any, of each asset or liability.

(f) Confidential Information.

(1) *Social Security Numbers.* Social security numbers, when required, shall not become part of the public record and shall be provided to the court **confidentially** as follows:

(A) A petition for dissolution or a complaint and answer for divorce, custody, legal separation, or annulment must be accompanied by an **information** sheet stating the name, date of birth, and social security number of each party to the action and each child who is or may be subject to a child support order in the action, to the extent known. The **information** sheet is **confidential** and shall not be **considered** part of the public record. The clerk of court shall provide a copy of the **confidential information** sheet to the Child Support Services Division upon request or whenever the court provides a child support order to a child support agency as required by state law. The clerk of court may also disclose the social security numbers on the **confidential information** sheet to the Bureau of Vital Statistics upon entry of a decree of divorce, dissolution, legal separation, or annulment of marriage, as required by state law. Further disclosure shall be authorized by court order only upon a showing of good cause.

(B) Once a complete **confidential information** sheet has been submitted to the court listing names, dates of birth, and social security numbers as required, the parties shall omit or redact social security numbers from documents subsequently filed in the action unless otherwise ordered by the court.

(C) A person whose interest in confidentiality may be adversely affected by disclosure of a social security number on a document filed in an action may move for an order requiring (i) the social security number to be redacted or the document to be treated as confidential, if the document has already been filed with the social security number included, or (ii) the document to be filed with the social security number redacted, if the document has not yet been filed.

(2) *Financial Account Numbers.* Unless otherwise ordered by the court, financial account numbers, when required under subsection (e) of this rule or when submitted in support of a motion, need not be provided in full. To protect against public disclosure of sensitive financial information, partial account numbers may be provided, as follows:

(A) a party may identify any credit card, bank card, or debit card account by using only the last four digits of the account number and the name of the issuing institution;

(B) a party may identify any bank, credit union, or other financial institution account by using only the last three digits of the account number and the name of the financial institution; and

(C) a person whose interest in confidentiality may be adversely affected by disclosure of a financial account number on a document filed in an action may move for an order requiring (i) the financial account number to be redacted or the document to be treated as confidential, if the document has already been filed with the financial account number included, or (ii) the document to be filed with the financial account number redacted, if the document has not yet been filed.

(g) Qualified Domestic Relations Orders. The party submitting a proposed Qualified Domestic Relations Order, or any similar order requiring the social security number of the beneficiary and alternate payee, shall submit a duplicate of the original proposed order with the social security number of the beneficiary and alternate payee redacted. The original proposed order is **confidential** and shall not be **considered** part of the public record. Only the redacted duplicate shall become part of the public case file.

(h) Applicability. Subsections (f) and (g) of this rule apply to documents filed with the court on or after October 15, 2006.

(i) Action for Divorce, Dissolution, or Annulment Filed After Action for Legal Separation.

(1) *Notice of Legal Separation Action.* A divorce, dissolution, or annulment action that is filed after the filing of an action for legal separation must include notice of the prior action.

(2) *Consolidation of Cases.* The consolidation of a divorce, dissolution, or annulment action with a legal separation action previously filed in Alaska is governed by AS 25.24.430 and Civil Rule 42(a).

(j) Action for Legal Separation--Commencement. An action for legal separation under AS 25.24.400-.460 is commenced by the filing of a complaint in the superior court.

CREDIT(S)

[Amended effective August 15, 1987; July 15, 1989; July 15, 1995; July 15, 1997; July 15, 1998; amended by Order No. 1595 dated March 22, 2006, effective October 15, 2006; amended by Order No. 1596 dated April 12, 2006, effective October 15, 2006.]

NOTE

Sections 41, 43, 45, and 46 of chapter 87 SLA 1997 amend AS 25.20.050(n), AS 25.24.160(d), AS 25.24.210(e), and AS 25.24.230(i), respectively, to require that an order or acknowledgement of paternity, a divorce decree, a petition for dissolution of marriage, and a dissolution decree include the social security number of each party to the action and each child whose rights are being addressed. According to § 151 of the Act, these provisions have

Rules of Civil Procedure, Rule 90.1

Page 4

the effect of amending Civil Rules 52, 58, 78, and 90.1 by requiring the court to include social security numbers, if ascertainable, of parties and children in certain petitions, pleadings, and judgments.

Rules Civ. Proc., Rule 90.1, AK R RCP Rule 90.1

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Governor Sean Parnell
STATE OF ALASKA

January 24, 2011

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

Together, we can better protect Alaska's children against abuse, exploitation, harm, and fear. To that end, and under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, distribution of indecent material to minors, and misconduct involving confidential information and probation.

The bill would strengthen Alaska laws related to sexual exploitation of children and domestic violence. The bill prohibits the creation of indecent images of children, online enticement of a child, and using a computer to solicit or entice a minor to engage in sexual behavior.

The bill would expand the crime of stalking to include those acts of following or monitoring the victim with a global positioning device, and using or installing a device to record or photograph events in the victim's home, workplace, vehicle, or on the victim's telephone or computer. These changes are in response to technologies that stalkers have available to terrorize victims.

Also, the bill would prohibit graphic texting, commonly known as "sexting." Perpetrators would be punished for distributing a sexually explicit image of a child under 16 years old.

The bill clarifies that conduct by predators outside the state that harm victims in Alaska may be prosecuted in this state. The bill also clarifies that a child under 16 years old may not be left with an individual who must register as a child kidnapper.

Finally, the bill would clarify that a court may order active supervision for probationers who are on felony probation. Active supervision in particular cases enhances public safety by requiring close supervision of certain offenders. Active supervision could also be provided to certain misdemeanants in the discretion of the commissioner of corrections.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell".

Sean Parnell
Governor

Enclosure

House Bill No. 127

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

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CSHB 127(JUD) STALKING AND EXPLOITATION OF A MINOR Sectional Analysis

Sections 1 and 2 expand the crime of stalking by amending the definition of “nonconsensual contact”. Stalking prohibits a person from engaging in a course of conduct that places another in fear of death or physical injury. “Course of conduct” is defined as repeated acts of nonconsensual conduct. The bill adds two ways that a defendant may contact a victim that is beyond the victim’s consent. First, it includes following or monitoring the victim with a global positioning device. Second, it includes installing or attempting to install a device for observing, recording, or photographing events in the home, workplace, or vehicle the victim uses, or on the personal telephone or computer that the victim uses.

Section 3 raises the classification of the crime of online enticement of a minor for a person who is not required to register as a sex offender or child kidnapper from a class C felony to a class B felony. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would be to raise the penalty from a range of zero to two years for a first offense (maximum term of five years) to a range of five to 15 years for a first offense (maximum term of 99 years). Also refer to section 12 of this analysis.

Section 4 raises the classification of the crime of online enticement of a minor for a person who is required to register as a sex offender or child kidnapper from a class B felony to a class A felony. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would be to raise the penalty from a range of one to three years (maximum term of 10 years) to a range of 15 to 30 years for a first offense (maximum term of 99 years). Also refer to section 12 of this analysis.

Section 5 raises the classification of the crime of unlawful exploitation of a minor from a class B felony to a class A felony for all offenders. Under current law the offense is a class A felony if the person has previously been convicted of unlawful exploitation of a minor, and it is a class B felony for other offenders. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would be to raise the penalty from a range of two to 12 years or five to 15 years (depending on whether it is a first or second offense) to a range of 15 to 30 years for a first offense. Also refer to section 12 of this analysis.

Section 6 amends the crime of endangering the welfare of a child in the first degree by prohibiting a parent or guardian from leaving a child under 16 years of age with a person who is required to register as a child kidnapper or is charged with child kidnapping. The

law currently prohibits a parent or guardian from leaving a child with a person required to register as a sex offender or who is charged with a sex offense.

Section 7 adopts a new crime – sending an explicit image of a minor. It would prohibit a person, acting with the intent to annoy or humiliate another person, from distributing an electronic photograph or video that depicts an image of a minor’s genitals, anus, or female breast taken when the minor was under 16 years of age. The prohibited conduct would be a class B misdemeanor (maximum term of imprisonment 90 days) if the person distributes the image to one or more other persons, and a class A misdemeanor (maximum term of imprisonment one year) if the person distributes the image to an Internet website that is accessible to the public.

Section 8 makes a conforming amendment to AS 11.61.120(a)(6), harassment in the second degree, to make it clear that the new crime of sending an explicit image of a minor in **Section 7** are not included in the crime of harassment in the second degree.

Section 9 adopts two new crimes – misconduct involving confidential information in the first and second degrees. The second degree offense prohibits a person from obtaining the confidential information about another person without legal authority or consent to do so. This conduct would be a class B misdemeanor (maximum term of imprisonment 90 days).

Misconduct involving confidential information in the first degree would prohibit a person from violating the second degree prohibition *and* using the confidential information to commit a crime or to obtain a benefit to which a person is not entitled, or injure or deprive another person of a benefit. This conduct would be a class A misdemeanor (maximum term of imprisonment one year).

Section 10 clarifies that a person may be prosecuted for online enticement of a minor and for sending an explicit image of a minor if the minor whose image is published, or with whom the person communicated, was in this state, even if the defendant was in another jurisdiction at the time he or she committed the prohibited acts.

Section 11 amends AS 12.55.125(i) (terms of imprisonment for persons who commit sex offenses) by conforming the terms of imprisonment for persons who commit unlawful exploitation of a minor or online enticement of a minor to the correct level in accord with the changes in **Sections 3 – 5** of the bill.

Section 12 clarifies the law by stating that while the Commissioner of Corrections provides probation officers to the superior court for the active supervision of person on probation for felony offenses, the Commissioner may, at his or her discretion, also provide probation officers for the active supervision of persons released for misdemeanor offenses.

Section 13 redrafts the law enacted last year allowing the Attorney General to issue administrative subpoenas for law enforcement to obtain limited information from an Internet service provider if there is probable cause to believe that an Internet service account has been used in connection with the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, or distribution of indecent material to a minor.

The bill allows a designee of the attorney general, still within the Department of Law, to issue the administrative subpoenas. It corrects a problem with the service provisions of the law to allow service of the subpoenas in any manner authorized by law or acceptable to the Internet service provider. The bill clarifies that a person who does not obey a subpoena or ask the court to quash the subpoena may be guilty of contempt. The bill does not include a problematic provision of current law which requires either returning information to the Internet service provider or destroying it if a criminal prosecution is not undertaken. There are two problems with this: first, an Internet service provider does not need the documents returned because they already have the information. Second, it is not good public policy for documents in the possession of a public agency be destroyed. It is better policy that this information is kept as part of a confidential police investigation. The bill also provides that a person may not bring a civil action against an Internet service provider for complying with an administrative subpoena.

Section 14 provides that the crime of unlawful exploitation of a minor is not included in the crimes that require an automatic waiver from juvenile to adult court for a person who is 16 or 17 years of age and who is charged with commission of the offense.

Sections 15 and 16 include the applicability and effective date provisions.

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

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GOVERNOR**

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CSHB 127(JUD)

The House Judiciary Committee made the following changes:

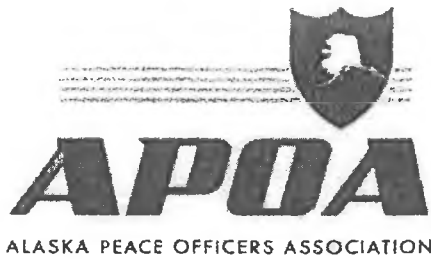
Section 7 adopts a new crime of sending an explicit image of a minor, commonly called “sexting”. The House Judiciary made several changes to it, including the following

- removed the class C felony and made placing the image on a website available to the public a class A misdemeanor;
- added the culpable mental state that the defendant must distribute the image with the intent to annoy or humiliate the person whose image is being sent;
- removes the requirement that the distribution be without the consent of the parents or legal guardian of the minor.

Distribution of indecent material to minors (removed in committee) – HB 127 included amendments to AS 11.61.128(a), which prohibits the distribution of indecent material to minors. The amendments in the original bill clarified the culpable mental states for the offense. This change was in response to suggestions by the ACLU, and they simply clarified what otherwise would have been read into the statute under the general provisions of AS 11.81.610. Although AS 11.81.610 provides that specific culpable mental states must be read into criminal statutes in Title 11, sometimes it is helpful to include them in the substantive statute for ease in understanding the law.

Section 13 is an addition to the bill that was made in House Judiciary at the request of the Department of Law. It redrafts the law enacted last year allowing the Attorney General to issue administrative subpoenas for law enforcement to obtain limited information from an Internet service provider if there is probable cause to believe that an Internet service account has been used in connection with the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, or distribution of indecent material to a minor. The sectional description of CSHB 127(JUD) describes the changes in detail.

Section 14 was added to the bill in House Judiciary at the request of the Department of Law and the Division of Juvenile Justice. It provides that the crime of unlawful exploitation of a minor, which is raised to a class A felony in the bill, is not included in the crimes that are automatically waived to adult court if committed by a 16 or 17 year old offender.



February 14, 2011

Honorable Sean Parnell
Governor
State of Alaska
PO Box 110001
Juneau, AK 99811-0001

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OFFICE OF THE GOVERNOR
MAILROOM
FEB 16 2011

Dear Governor Parnell:

On behalf of our respective organizations, we would like to thank you for facilitating the introduction of House Bill 127 and Senate Bill 72, relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, distribution of indecent material to minors, and misconduct involving confidential information; relating to probation; and providing for an effective date.

We met recently to review proposed legislation and decided to unanimously support this bill.

Again, thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organizations can do to assist in the passage of this bill.

Sincerely,

John Lucking Jr., President
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