

SB

187

<TARGET><BILL>SB 187</BILL><SUBJECT>SB
187</SUBJECT><COMM>SJUD28</COMM></TARGET>

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 187(JUD)
Fiscal Note Number: 1
(S) Publish Date: 3/18/14

Identifier: SB187-DOC-OC-03-07-14
Title: CHILD WELFARE; CONFIDENTIAL
INFORMATION
Sponsor: COGHILL
Requester: Senate Judiciary

Department: Department of Corrections
Appropriation: Administration and Support
Allocation: Office of the Commissioner
OMB Component Number: 694

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This is the original version of the bill.

Prepared By: <u>April Wilkerson, Director</u>	Phone: <u>(907)465-3460</u>
Division: <u>Administrative Services - Department of Corrections</u>	Date: <u>03/07/2014 04:00 PM</u>
Approved By: <u>Leslie Houston, Deputy Commissioner</u>	Date: <u>03/07/14</u>
Agency: <u>Department of Corrections</u>	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 187(JUD)

Analysis

This legislation amends the endangering the welfare of a child statute to prohibit a person from committing a homicide, assault, or sexual assault against a household member in the presence of a child under the age of 16. Violation of this section of statute is a class A misdemeanor.

It also prohibits the publication or distribution of an audio or video recording of a child's interview for a criminal or child protection investigation unless the distribution has been directed by a court order, court rule, or by state or federal law. Violation of this section of statute is misconduct involving confidential information in the first degree and is a class A misdemeanor.

Class A misdemeanors are punishable by a term of imprisonment of not more than one year. At the current daily cost of care the Department could see an impact ranging from \$0.0 (no time served) to \$57,914.6 (for a one year sentence) for each offender convicted under this legislation.

The Department will continue to monitor the potential future impacts of this legislation.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 187(JUD)
Fiscal Note Number: 2
(S) Publish Date: 3/18/14

Identifier: SB187-LAW-CRIM-03-07-14
Title: CHILD WELFARE; CONFIDENTIAL
INFORMATION
Sponsor: COGHILL
Requester: (S) JUDICIARY

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By: Loretta Withington, Division Operations Manager
Division: Department of Law
Approved By: Michael C. Geraghty, Attorney General
Agency: Department of Law

Phone: (907)465-5427
Date: 03/07/2014 04:50 PM
Date: 03/07/14

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 187(JUD)

Analysis

The bill adopts a new crime under endangering the welfare of a child in the second degree (AS 11.51.10(a)) to prohibit most crimes against a person that are crimes involving domestic violence and committed in the physical presence or hearing of a child under 16 years of age who is a household member of either the perpetrator or the victim. This conduct would be a class A misdemeanor.

The bill also adopts a new crime under misconduct involving confidential information in the first degree (AS 11.76.113(a)) to prohibit a person from publishing or distributing an audio or video interview of a child or records of a medical examination of a victim or minor in cases involving sexual assault or abuse or in a child protection investigation. The crime would not apply if the material was published or distributed under a court order, court rule, or federal or state law.

The bill limits materials that may be provided to the defendant in a criminal prosecution as part of discovery if the prosecution is for sexual assault or sexual abuse of a minor. It requires that an audio or video interview of the victim and photographs taken during a medical examination of a victim remain in the possession of the defendant's attorney, and may be shown to the defendant only as necessary to prepare the defense.

The Department of Law does not anticipate a fiscal impact.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 187(JUD)
Fiscal Note Number: 3
(S) Publish Date: 3/18/14

Identifier: SB187-DOA-OPA-03-07-2014
Title: CHILD WELFARE; CONFIDENTIAL
INFORMATION
Sponsor: COGHILL
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Richard Allen, Director</u>	Phone: <u>(907)269-3504</u>
Division: <u>Office of Public Advocacy</u>	Date: <u>03/07/2014 12:15 PM</u>
Approved By: <u>Curtis Thayer, Commissioner</u>	Date: <u>03/07/14</u>
Agency: <u>Department of Administration</u>	

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 187(JUD)

Analysis

This bill amends the substantive criminal code, Title 11, by creating two new offenses and creating a related amendment to Rule 16 of the Alaska Rules of Criminal Procedure.

The bill first amends AS 11.51.110(a), which defines the offense of endangering the welfare of a child, by adding a new subparagraph (B)(2). That new sub-paragraph would specify certain new offense conduct. The new offense conduct would be knowingly engaging in conduct that violates AS 11.41.100, 11.41.220, 11.41.230(a)(1), 11.41.410-.432 or 11.41.450 against another person who is a household member of the person with reckless disregard that the conduct is in the physical presence or hearing of a child under 16 years of age who is a household member of either person.

The bill further amends AS 11.76.113(a), concerning the crime of misconduct involving confidential information, by adding a new subparagraph (B)(2). The new subparagraph would expand the definition of offense conduct to include publishing or distributing an audio or video recording of an interview of a child for a criminal or child protection investigation, or records of a medical examination of a victim or minor for purposes of investigation of an offense under AS 11.41.410-11.41.440 (sexual assaults and sexual assault of a minor offenses) , or 11.41.450 or a child protection investigation, including photographs of taken during the examination.

The bill further amends Rule 16(d)(3) Alaska Rules of Criminal Procedure by adding a new paragraph (3)(A)(viii) and (ix). Those new paragraphs would specify that in prosecutions under AS 11.41.410-.440 (sex offenses) that audio or video recordings of interviews of victims may be shared with but not given to the defense or the defendant. The bill further amends Rule 16(3)(D) by specifying that a violation of that rule by a party or counsel may be a criminal offense, per the proposed criminal statute amendments in the bill.

Overall, SB 187 is a substantive amendment to the criminal code and the rules of criminal procedure. If enacted as filed the bill would likely result in substantive increases in both the number of criminal prosecutions and the gravity of those prosecutions, brought under the new statutes. That increase would materially impact the case and workloads of the Office of Public Advocacy (OPA) defense attorneys and staff handling the defense in those cases. Realistic assessment of the fiscal impact would likely have to wait for actual caseload statistics to be developed after experience for one or two years under the new law. Therefore, OPA submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 187(JUD)
Fiscal Note Number: 4
(S) Publish Date: 3/18/14

Identifier: SB187-DOA-PDA-03-07-14
Title: CHILD WELFARE; CONFIDENTIAL
INFORMATION
Sponsor: COGHILL
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By: <u>Quinlan Steiner, Public Defender</u>	Phone: <u>(907)334-4414</u>
Division: <u>Public Defender Agency</u>	Date: <u>03/07/2014 11:00 AM</u>
Approved By: <u>Curtis Thayer, Commissioner</u>	Date: <u>03/07/14</u>
Agency: <u>Department of Administration</u>	

FISCAL NOTE ANALYSIS #4

**STATE OF ALASKA
2014 LEGISLATIVE SESSION**

BILL NO. CSSB 187(JUD)

Analysis

SB187 creates a new crime of endangering the welfare of a child for committing certain serious felonies against a household member in the presence of a child. This bill also creates a new crime for publishing or distributing certain materials and recordings of victims or minors related to the investigation of sex crimes and expands the list of items under Criminal Rule 16 that must remain in the sole custody of the attorney to include recordings of sex crime victim interviews and medical examinations.

SB187 may impact how some criminal cases are litigated but is not expected to have a fiscal impact on the Public Defender Agency. The agency therefore submits a zero note.

Alaska State Legislature

Senate Majority Leader

Judiciary Committee

Chairman

In-State Energy Committee

Co-Chair

State Affairs Committee

Joint Armed Services Committee

Legislative Council

Rules Committee



Senator John Coghill

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SB 187 SECTIONAL

Relating to Sensitive Confidential Information Involving a Minor in Sexual Abuse and Child Abuse Cases

Section 1. Adds to AS 11.76.113(a), *Misconduct involving confidential information in the first degree*, an offense for publishing or distributing an audio or video recording of an interview of a child, or other physical evidence gathered for a criminal or child protection investigation. Class A Misdemeanor.

Exceptions to the prohibition would be distribution required by a court order, a rule of court, or if distribution is required by federal or state law.

Sec. 2. Adds to the list of materials to *Remain in the Custody of Attorney* in Rule 16(d)(3) of Alaska Rules of Criminal Code: (1) an audio or video interview of a victim; and (2) photographs taken during a medical examination of a victim.

Sec. 3. Adds a new court rule in Rule 16(d) of Alaska Rules of Criminal Code, Rule(d)(7), *Confidential filing*, which would require evidence described in section 2 to be filed with the court in a confidential envelope.

Sec. 4. Adds to Child in Need of Aide (CINA) Rules of Procedure Rule 8, a new subsection (j), *Disclosure of recording and medical records*, which is the counterpart of Discovery Rules in Rule 16 of Alaska Rules of Criminal Code.

Sec. 5. Applicability clause to offenses committed on or after the effective date.

Sec. 6. Gives the bill an immediate effective date.

Alaska State Legislature

Senate Majority Leader

Judiciary Committee

Chairman

In-State Energy Committee

Co-Chair

State Affairs Committee

Joint Armed Services Committee

Legislative Council

Rules Committee



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SPONSOR STATEMENT

SB 187 - Misconduct Involving Confidential Information

SB 187 is a product of reaction to a real life event that occurred in Alaska. A young child was interviewed at a Child Advocacy Center (CAC) as a victim of child abuse and the child's sibling who was a witness to the abuse was also interviewed. Both children disclosed some significant physical abuse which resulted in hospitalization. Part of the interview of the victim, and the entire interview of the sibling who witnessed the abuse were posted on YouTube and another website.

This bill would add to AS 11.76.113, the crime of misconduct involving confidential information in the first degree, anyone who publishes or distributes an audio or video recording of an interview of a child, or other physical evidence gathered for a criminal or child protection investigation. Exceptions to the prohibition would be distribution required by a court order, a rule of court, or if distribution is required by federal or state law. This is a Class A Misdemeanor.

The Committee Substitute would also make an exception for the use of such evidence for training of law enforcement, forensic interviewers, prosecutors, and defense bar if the victim or a parent or guardian of the minor gives permission for the release.

SB 187 also includes a court rule changes that add video and audio interviews and photographs of medical exams of victims of crimes of sexual assault in the first, second, third, or fourth degree; sexual abuse of a minor in the first, second, third and fourth degree; or incest to the list of evidence that must remain in the physical custody of the attorney representing the defendant. The evidence can be shared with the defendant, but the defendant is prohibited from having copies of the materials.

CS ordered

SENATE BILL NO. 187

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATOR COGHILL

Introduced: 2/21/14
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of endangering the welfare of a child in the second degree;
2 relating to the crime of misconduct involving confidential information in the first
3 degree; amending Rule 16(d)(3), Alaska Rules of Criminal Procedure; and providing for
4 an effective date."

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

6 * Section 1. AS 11.51.110(a) is amended to read:

7 (a) A person commits the offense of endangering the welfare of a child in the
8 second degree if the person [,]

9 (1) while caring for a child under 10 years of age,

10 (A) [(1)] causes or allows the child to enter or remain in a
11 dwelling or vehicle in which a controlled substance is stored in violation of
12 AS 11.71; or

13 (B) [(2)] is impaired by an intoxicant, whether or not
14 prescribed for the person under AS 17.30, and there is no third person who is at

Deleted in CS

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least 12 years of age and not impaired by an intoxicant present to care for the child; or

(2) knowingly engages in conduct that violates AS 11.41.100 - 11.41.220, 11.41.230(a)(1), 11.41.230(a)(2), 11.41.410 - 11.41.432, or 11.41.450 against another person who is a household member of the person with reckless disregard that the conduct is in the physical presence or hearing of a child under 16 years of age who is a household member of either person.

Deleted in CS

* Sec. 2. AS 11.51.110(b) is amended by adding a new paragraph to read:

(3) "household member" has the meaning given in AS 18.66.990.

* Sec. 3. AS 11.51.110(c) is amended to read:

(c) Endangering the welfare of a child in the second degree under (a)(1) of this section is a violation.

* Sec. 4. AS 11.51.110 is amended by adding a new subsection to read:

(d) Endangering the welfare of a child in the second degree under (a)(2) of ~~this~~ section is a class A misdemeanor.

* Sec. 5. AS 11.76.113(a) is amended to read:

(a) A person commits the crime of misconduct involving confidential information in the first degree if the person

(1) violates AS 11.76.115 and obtains the confidential information with the intent to

(A) [(1)] use the confidential information to commit a crime; or

(B) [(2)] obtain a benefit to which the person is not entitled, to

injure another person, or to deprive another person of a benefit; or

(2) publishes or distributes an audio or video recording of an interview of a child for a criminal or child protection investigation, or records of a medical examination of a victim or minor conducted for the purpose of the investigation of an offense under AS 11.41.410 - 11.41.440, 11.41.450, or a child protection investigation, including photographs taken during the examination; this paragraph does not apply to a person who publishes or distributes a recording, record, or image as permitted or directed under

(A) a court order;

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- (B) a rule of court; or**
- (C) a federal or state law requiring the publication or distribution.**

* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(d)(3), Alaska Rules of Criminal Procedure, is amended to read

(3) Materials to Remain in Custody of Attorney.

(A) Materials furnished to an attorney pursuant to these rules shall be used only for the purpose of conducting the case. The following materials must remain in the custody of the defense attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the defendant's case, and shall be subject to other terms and conditions that the court may provide. The materials listed in this paragraph shall not be provided to the defendant, but the information in the materials may be shared with the defendant to the extent necessary to prepare the defense of the case:

- (i) a criminal history record of a victim or witness;**
- (ii) a medical, psychiatric, psychological, or counseling record of a victim or witness;**
- (iii) an adoption record;**
- (iv) a record that is confidential under AS 47.12.300 or a similar law in another jurisdiction;**
- (v) a report of a presentence investigation of a victim or witness prepared pursuant to Criminal Rule 32.1 or a similar law in another jurisdiction;**
- (vi) a record of the Department of Corrections other than the defendant's own file and any other incident report relating to the crime with which the defendant is charged; [AND]**
- (vii) any other record that the court orders be kept in the exclusive custody of the attorney;**
- (viii) in a prosecution under AS 11.41.410 - 11.41.440**

1 or 11.41.450, an audio or video interview of a victim; and
2 (ix) in a prosecution under AS 11.41.410 - 11.41.440
3 or 11.41.450, photographs taken during a medical examination of a
4 victim.

5 (B) An attorney shall not disclose to a defendant the residence
6 or business address or telephone number of a victim or witness, obtained from
7 information provided under this rule, even if the defendant is acting as co-
8 counsel. If the address and telephone numbers of all victims and witnesses
9 have been obliterated, materials that had contained the address or telephone
10 number of a victim or witness may be provided to a defendant proceeding
11 without counsel only as allowed by AS 12.61.120.

12 (C) Notwithstanding a defendant's status as co-counsel,
13 materials covered by subsection (d)(3)(A) shall remain in the custody of the
14 defendant's attorney, the attorney's staff, investigators, experts, and others as
15 necessary for the preparation of the defendant's case, and shall be subject to
16 other terms and conditions that the court may provide.

17 (D) If a defendant is proceeding without counsel, materials
18 covered by subsection (d)(3)(A) may be provided to the defendant. If materials
19 are provided to an unrepresented defendant under this paragraph, the court
20 shall order that the materials remain in the defendant's exclusive custody, be
21 used only for purposes of conducting the case, and be subject to other terms,
22 conditions, and restrictions that the court may provide. Upon a showing of
23 good cause, the court may impose specific terms, conditions, or restrictions
24 concerning inspection of the materials by other persons involved in the
25 preparation of the case, such as staff, investigators, experts, witnesses, or
26 others. The court shall also inform the defendant and such other persons
27 involved in the preparation of the case that violation of an order issued under
28 this paragraph is punishable as a contempt of court and may also constitute a
29 criminal offense.

30 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 **APPLICABILITY.** (a) Sections 1 - 5 of this Act apply to offenses committed on or
2 after the effective date of this Act.

3 (b) Section 6 of this Act applies to all criminal proceedings pending on or arising after
4 the effective date of this Act, regardless of whether the prosecution was initiated before the
5 effective date of the Act.

6 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

*New Sections attached with memo dated
March 5, 2014*

Alaska State Legislature

Senate Majority Leader

Judiciary Committee

Chairman

In-State Energy Committee

Co-Chair

State Affairs Committee

Joint Armed Services Committee

Legislative Council

Rules Committee



Senator John Coghill

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www.aksenate.org

Date: March 5, 2014

To: Kathleen Straasbaugh, Legal Council

From: Rynniva Moss, Legislative Aide *Rynniva Moss*

Re: SB 187 – 28-LS1145\U - Additional changes to Blank CS

1. CJA recommends an additional change to Criminal Rule 16(d), which would assist the court process and provide a procedure to file and protect a copy of the sensitive information with the court when necessary to a hearing or trial. This would add a subsection to the rule which would read:

(7) Confidential filing. In the event a party files with the court, or offers as an exhibit in a trial or other hearing, any materials listed in subsection (d)(3)(A)(viii or (xi) of this rule, the party will file the materials in a confidential envelope. For purposes of this section "confidential" is defined by Rule 37.5 of the Alaska Rules of Administrative Procedure.

2. CJA recommends adding another section to the bill which amends Child in Need of Aid Rule 8 to protect sensitive information counsel obtain through discovery in CINA proceedings (in other words, the counterpart to Criminal Rule 16). It would read:

The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 8 of the Alaska Child in Need of Aid Rules is amended to add a new paragraph to read:

(j) Disclosure of recordings and medical records

1) Video, audio recordings, medical records of a child, including photographs produced as part of a medical examination of a child may not be redisclosed by parties to any person except that the material may be disclosed to the party's attorney, the attorney's staff or investigators, and others as necessary for the preparation of the party's case.

2) In the event a party files with the court, or offers as an exhibit in a trial or other hearing, any materials listed in subsection (j) of this rule, the party will file the materials in a confidential envelope. For purposes of this section "confidential" is defined by Rule 37.5 of the Alaska Rules of Administrative Procedure.

2013 - 2014 Alaska Rules of Criminal Procedure

Rule 16. Discovery.

(a) Scope of Discovery. In order to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, and the adversary system.

(b) Disclosure to the Accused.

(1) Information within Possession or Control of Prosecuting Attorney. (A) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the prosecuting attorney shall disclose the following information within the prosecuting attorney's possession or control to defense counsel and make available for inspection and copying:

(i) The names and addresses of persons known by the government to have knowledge of relevant facts and their written or recorded statements or summaries of statements;

(ii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused;

(iii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant;

(iv) Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused; and

(v) Any record of prior criminal convictions of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(B) Expert Witnesses. Unless a different date is set by the court, as soon as known and no later than 45 days prior to trial, the prosecutor shall inform the defendant of the names and addresses of any expert witnesses performing work in connection with the case or whom the prosecutor is likely to call at trial. The prosecutor shall also make available for inspection and copying any reports or written statements of these experts. With respect to each expert whom the prosecution is likely to call at trial, the prosecutor shall also furnish to the defendant a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the defendant to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other

sanctions, including prohibiting the prosecutor from calling the expert at trial or declaring a mistrial.

(2) *Information Provided by Informant – Electronic Surveillance.* The prosecuting attorneys shall inform defense counsel:

(A) of any relevant material or information relating to the guilt or innocence of the defendant which has been provided by an informant, and

(B) of any electronic surveillance, including wiretapping, of

(i) conversations to which the accused or the accused's attorney was a party,

(ii) premises of the accused or the accused's attorney.

(3) *Information Tending to Negate Guilt or Reduce Punishment.* The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce the accused's punishment therefor.

(4) *Information Within Possession or Control of Other Members of Prosecuting Attorney's Staff.* The prosecuting attorney's obligations extend to material and information in the possession or control of

(A) members of the prosecuting attorney's staff, and

(B) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office.

(5) *Availability of Information to Defense Counsel.* Whenever defense counsel designates and requests production of material or information which is not in the possession or control of the prosecuting attorney but would be discoverable if in the possession or control of the prosecuting attorney, the court shall issue suitable subpoenas or orders to cause such material to be made available to defense counsel.

(6) *Information Regarding Searches and Seizures – Statements From the Accused – Relationship of Witnesses to Prosecuting Attorney.* Except as otherwise provided the prosecuting attorney shall, upon request of defense counsel, disclose and permit inspection, testing, copying and photographing of any relevant material and information regarding:

(A) Specified searches and seizures;

(B) The acquisition of specified statements from the accused; and

(C) The relationship, if any, of specified witnesses to the prosecuting authority.

(7) Other Information. Upon a reasonable request showing materiality to the preparation of the defense, the court in its discretion may require disclosure to defense counsel of relevant material and information not covered by subsections (b)(1), (b)(2), (b)(3), and (b)(6).

(8) Legal Research and Records of Prosecuting Attorney. Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff.

(9) Restriction on Availability of Certain Material. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant and the defendant's attorney. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

(c) Disclosure to the Prosecuting Attorney.

(1) Non-Testimonial Identification Procedures -- Authority. Upon application of the prosecuting attorney, the court by order may direct any person to participate in one or more of the procedures specified in subsection (c) (2) of this rule if affidavit or testimony shows probable cause to believe that:

(A) An offense has been committed by one of several persons comprising a narrow focal group that includes the subject person;

(B) The evidence sought may be of material aid in identifying who committed the offense; and

(C) The evidence sought cannot practicably be obtained from other sources.

(2) Non-Testimonial Identification Procedures -- Scope. An order issued under subsection (c)(1) of this rule may direct the person to do or submit to any and all of the following:

(A) Appear in a line-up;

(B) Speak words, phrases or sentences relevant to the case for identification by witnesses;

(C) Be fingerprinted;

(D) Pose for photographs not involving reenactment of a scene;

(E) Try on articles of clothing;

(F) Permit the taking of specimens of material under the person's fingernails;

(G) Permit the taking of samples of blood, hair and other materials of the person's body which involve no unreasonable intrusion thereof;

(H) Provide specimens of the person's handwriting;

(I) Submit to a reasonable physical or medical inspection of the person's body.

(3) *Right to Counsel.* When issuing an order under subsection (c) (1) of this rule, the court shall also order that the person be represented by counsel or waive the right to be represented by counsel before being required to appear in a lineup, give a specimen of handwriting, or speak for identification by witnesses to an offense.

(4) *Expert Witnesses.* Unless a different date is set by the court, no later than 30 days prior to trial, the defendant shall inform the prosecutor of the names and addresses of any expert witnesses the defendant is likely to call at trial. The defendant shall also make available for inspection and copying any reports or written statements of these experts. For each such expert witness, the defendant shall also furnish to the prosecutor a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from calling the expert at trial. Information obtained by the prosecutor under this rule may be used only for cross-examination or rebuttal of defense testimony.

(5) *Notice of Defenses.* Unless a different date is set by the court, no later than 10 days prior to trial, the defendant shall inform the prosecutor of the defendant's intention to rely upon a defense of alibi, justification, duress, entrapment, or other statutory or affirmative defense. Failure to provide timely notice under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from asserting the designated defense. The defendant shall give notice of an insanity defense or a defense of diminished capacity due to mental disease or defect in compliance with AS 12.47.

(6) *Physical Evidence.* If defense counsel or defense counsel's agent acquires physical evidence of the offense, defense counsel must immediately notify the prosecutor and must make arrangements to turn over the evidence to the prosecutor within a reasonable time. Differences concerning what amount of time is "reasonable" shall be resolved by the court. Defense counsel must not test or substantively alter the evidence, unless defense counsel has first notified the prosecutor and given the prosecutor a reasonable opportunity to seek court action. Defense counsel must reveal all information concerning the manner in which the evidence was obtained and handled unless that information is privileged. When physical evidence is disclosed by the

defense, the prosecutor cannot reveal to the jury that the evidence was obtained from the defense.

(d) Regulation of Discovery.

(1) *Advice to Refrain From Discussing Case.* Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither counsel for the parties nor other prosecution or defense personnel shall advise persons (except the accused) having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Additional or Newly Discovered Information.* If, subsequent to compliance with these rules or orders issued pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's counsel of its existence. If the additional material or information is discovered during trial, the court shall also be notified.

(3) *Materials to Remain in Custody of Attorney.*

(A) Materials furnished to an attorney pursuant to these rules shall be used only for the purpose of conducting the case. The following materials must remain in the custody of the defense attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the defendant's case, and shall be subject to other terms and conditions that the court may provide. The materials listed in this paragraph shall not be provided to the defendant, but the information in the materials may be shared with the defendant to the extent necessary to prepare the defense of the case:

(i) a criminal history record of a victim or witness;

(ii) a medical, psychiatric, psychological, or counseling record of a victim or witness;

(iii) an adoption record;

(iv) a record that is confidential under AS 47.12.300 or a similar law in another jurisdiction;

(v) a report of a presentence investigation of a victim or witness prepared pursuant to Criminal Rule 32.1 or a similar law in another jurisdiction;

(vi) a record of the Department of Corrections other than the defendant's own file and any other incident report relating to the crime with which the defendant is charged; and

(vii) any other record that the court orders be kept in the exclusive custody of the attorney.

(B) An attorney shall not disclose to a defendant the residence or business address or telephone number of a victim or witness, obtained from information provided under this rule, even if the defendant is acting as co-counsel. If the address and telephone

numbers of all victims and witnesses have been obliterated, materials that had contained the address or telephone number of a victim or witness may be provided to a defendant proceeding without counsel only as allowed by AS 12.61.120.

(C) Notwithstanding a defendant's status as co-counsel, materials covered by subsection (d)(3)(A) shall remain in the custody of the defendant's attorney, the attorney's staff, investigators, experts, and others as necessary for the preparation of the defendant's case, and shall be subject to other terms and conditions that the court may provide.

(D) If a defendant is proceeding without counsel, materials covered by subsection (d)(3)(A) may be provided to the defendant. If materials are provided to an unrepresented defendant under this paragraph, the court shall order that the materials remain in the defendant's exclusive custody, be used only for purposes of conducting the case, and be subject to other terms, conditions, and restrictions that the court may provide. Upon a showing of good cause, the court may impose specific terms, conditions, or restrictions concerning inspection of the materials by other persons involved in the preparation of the case, such as staff, investigators, experts, witnesses, or others. The court shall also inform the defendant and such other persons involved in the preparation of the case that violation of an order issued under this paragraph is punishable as a contempt of court.

(4) *Restriction or Deferral of Disclosure of Information.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) *Material Partially Discoverable.* When some parts of certain material are discoverable under these rules, and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Excision of certain material and disclosure of the balance shall be preferred to withholding of the whole. Material excised pursuant to court order shall be sealed and preserved in the records of the court, and shall be made available to the court of appeals and the supreme court in the event of an appeal.

(6) *Denial or Regulation of Disclosure -- Disclosure to Court in Camera -- Record of Proceedings.* Upon request of any party, the court may permit:

(A) any showing of cause for denial or regulation of disclosure, or

(B) any portion of any showing of cause for denial or regulation of disclosure to be made to the court in camera ex parte. A record shall be made of such proceedings. If the court enters an order granting relief following such a showing, the entire record of the proceedings shall be sealed and preserved in the records of the court, to be made available to the court of appeals and the supreme court in the event of an appeal.

(e) **Sanctions.**

(1) Failure to Comply with Discovery Rule or Order. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court shall order such party to permit the discovery of material and information not previously disclosed or enter such other order as it deems just under the circumstances.

(2) Willful Violations. Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

(f) Omnibus Hearing.

(1) Time for Hearing – When Set. If the defendant is charged with a felony, the court shall set a time for an omnibus hearing when a plea of not guilty is entered. The omnibus hearing shall be scheduled for a time when the briefing of pretrial motions should be complete.

The omnibus hearing may be cancelled by the court only upon the stipulation of counsel that there are no motions which require hearing and that discovery is complete. Counsel shall also provide the information outlined in section (f)(2)(D).

The court may set an omnibus hearing in a misdemeanor case.

(2) Duties of Trial Court at Hearing. At the omnibus hearing the court shall:

(A) ensure that discovery under this rule is complete;

(B) rule on any pending motions which are ripe for decision;

(C) schedule any necessary evidentiary hearings; and

(D) obtain case management information from the parties, including the expected length of trial, the likelihood of trial, and any anticipated scheduling difficulties.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 211 effective July 15, 1975; by SCO 212 effective July 15, 1975; by SCO 329 effective January 1, 1979; by SCO 331 effective January 1, 1979; by SCO's 640 and 641 effective September 15, 1985; by SCO 1086 effective July 15, 1992; by SCO 1092 effective July 15, 1992; by SCO 1126 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1191 effective July 15, 1995; by SCO 1269 and 1274 effective July 15, 1997; by SCO 1444 effective October 15, 2001; by SCO 1717 effective April 15, 2011; and by SCO 1806 effective nunc pro tunc July 1, 2013)

Note: AS 12.61.120, added by ch. 57, § 13, SLA 1991, amended Criminal Rule 16 by restricting discovery available to criminal defendants.

Note: Criminal Rule 16 was repealed and reenacted by chapter 95 SLA 1996. In *State v. Summerville*, 926 P.2d 465 (Alaska App. 1996), the Alaska Court of Appeals found that the legislature's version of the rule was unconstitutional. This decision was affirmed

by the Alaska Supreme Court in **State v. Summerville**, 948 P.2d 469 (Alaska 1997). Thus, the pre-existing version of the rule remains in effect.

Note: Chapter 43, SLA 2013 (SB 22), effective nunc pro tunc to July 1, 2013, amended Criminal Rule 16(b) by adding a new paragraph (9) relating to requests by defendants to copy, photograph, duplicate, or otherwise reproduce certain prohibited material. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

[Return to top](#)

Rule 17. Subpoena.

(a) For Attendance of Witnesses--Form-- Issuance.

(1) Subpoenas shall be issued by the clerk under the seal of the court, and shall be signed and sealed but otherwise in blank. The party requesting a subpoena shall fill in the blanks before the subpoena is served.

(2) A subpoena shall

(i) state the name of the court and the title, if any, of the proceeding, and

(ii) state whether the witness is to testify on behalf of the state, a municipality, city or borough, and order any witness testifying on behalf of the state, a municipality, city or borough, to appear without the prepayment of any witness fee, and

(iii) command each per

2013 - 2014 Child in Need of Aid Rules of Procedure

PART IV. DISCOVERY, EVIDENCE, PROOF

Rule 8. Disclosures, Depositions, and Discovery.

(a) General. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Applicability of the Civil Rules Regarding Discovery. Discovery and disclosure in CINA actions are governed by Civil Rules 26-37, with the following exceptions and modifications: Civil Rule 26(a), (e), (f), and (g), and Civil Rule 26.1 do not apply in CINA cases.

(c) Initial Disclosures. Except to the extent otherwise directed by order or rule, a party shall, without awaiting a discovery request, provide to other parties the following information, excluding any privileged material:

(1) the Department shall make available all information pertaining to the child prepared by or in the possession of the Department;

(2) a parent shall provide the name, address, or other information pertaining to the identity and location of the other parent of the child, if the parent has not already been identified and located;

(3) if the child has been removed, a parent shall provide the names, addresses, or other contact information pertaining to the location of grandparents and other adult relatives so placement options may be explored;

(4) a parent shall provide the names and addresses of any schools attended by the child and the names and addresses of any medical, mental health, and other treatment providers of the child;

(5) a parent shall provide the name and location of any Indian tribe as defined in CINA Rule 2(j) in which the parent has reason to believe the child is a member or may be eligible for membership;

(6) a guardian ad litem shall disclose a list of the types of information the guardian ad litem has gathered regarding the case, including records from specified sources and the names and contact information for persons interviewed or surveyed who are not parties, yet have provided information about the case; and

(7) a tribe that has intervened in the proceedings shall disclose names and contact information for extended family of the child, a list of potential placements under 25 U.S.C. § 1915, and a summary of any tribal services or tribal court actions involving the family.

Unless otherwise directed by the court, these disclosures shall be made within 45 days of the date of service of the petition for adjudication, or for tribes, the date of the order granting intervention. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(d) Disclosures of Witnesses with Special Expertise.

(1) *Retained Experts.* Except as otherwise stipulated or directed by the court, a party shall disclose the identity of an expert witness whom the party intends to call at trial and who has been retained, with or without compensation, to provide expert testimony or whose duties as an employee of the party regularly involve giving expert testimony. For such witnesses, the party shall provide:

(A) the expert's curriculum vitae; and

(B) a written summary of the substance of the anticipated testimony of the expert, the expert's opinion, and the underlying basis of the opinion.

(2) *Other Experts.* For all other experts, if a party intends to call an expert witness who has had involvement with the family, but has not been retained solely for the purpose of providing an expert opinion, the party shall disclose to other parties the identity of that witness and shall provide any existing reports or written statements of these experts. For experts identified in this paragraph, parties are not required to provide the information in paragraph (1) except upon request.

(3) Expert disclosures shall be made at the times and in the sequence directed by the court.

(e) Pretrial Disclosures.

(1) In addition to the disclosures otherwise required by this rule, a party shall provide to other parties the following information regarding the evidence that it may present at trial:

(A) the name, address, and telephone number of each witness; and

(B) an exhibit list accompanied by the exhibits the party expects to submit at trial.

(2) Disclosure of witness lists and exhibits shall be made at the times and in the sequence directed by the court.

(f) Discovery from Guardian Ad Litem.

(1) *Discovery of Documents in Guardian Ad Litem's Possession.* A party may obtain discovery of documents in the possession, custody, or control of the guardian ad litem, subject to the following limitations:

(A) the documents must be discoverable under Civil Rule 26(b)(1); and

(B) trial preparation materials as defined in Civil Rule 26(b)(3) are discoverable only as permitted by that rule.

(2) *Discovery Regarding Guardian Ad Litem's Testimony.* If the guardian ad litem has served notice that the guardian ad litem intends to testify, a party may obtain discovery from the guardian ad litem about the substance of this testimony.

(3) *Other Inquiry.* A party may obtain other discovery from a guardian ad litem only as permitted by the court upon a showing of good cause. The court may permit a party to question a guardian ad litem about the guardian ad litem's professional qualifications and experience or the guardian ad litem's performance in the case. But this inquiry must be conducted in the presence of the court.

(g) *Depositions.* Depositions may be taken in accordance with the Civil Rules and CINA Rule 8(f), except that no child under 16 years of age may be deposed except upon court order.

(h) *Scope and Timing.* In order to comply with statutory timeframes of AS 47.10 or for other good cause, the court may shorten time periods for discovery. The court may order further discovery and grant a continuance to accomplish the discovery at any phase of the proceeding if it believes that the parties have not had adequate opportunity to develop the existing evidence.

(i) *Supplementation.* A party who has made disclosures or responses to discovery under this rule is under a duty to supplement or correct the disclosures or responses to include information thereafter acquired if ordered by the court or if the party learns that the information disclosed or the response given is incomplete or incorrect in some material respect, and that the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. This duty to supplement or correct disclosures and responses extends to information provided in expert disclosures under subsection (d) of this rule.

(SCO 845 effective August 15, 1987; rescinded and readopted by SCO 1561 effective April 15, 2006)

[Return to top](#)

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 187(), Draft Version "N"

1 Page 2, line 17:

2 Delete "the"

3

4 Page 2, line 18:

5 Delete "victim"

6 Insert "an adult victim or a minor victim for whom the disabilities of minority have
7 been removed for general purposes under AS 09.55.590"

8

9 Page 2, line 19, following "(ii)":

10 Insert "a"

11

12 Page 5, line 2:

13 Delete "another person"

14 Insert "a party's expert witness"

15

16 Page 5, line 9:

17 Delete "This Act applies"

18 Insert "(a) Sections 1 and 2 of this Act apply to offenses committed on or after the
19 effective date of this Act.

20 (b) Sections 3 - 5 of this Act apply"