

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS)

CS FOR HOUSE BILL NO. 1(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/14/03

Referred: Finance

Sponsor(s): REPRESENTATIVES HEINZE AND CRAWFORD, McGuire, Gara, Lynn, Kerttula, Meyer

SENATORS Guess, French, Dyson, Gary Stevens, Wagoner, Seekins, Lincoln, Ellis, Davis, Elton, Bunde, Cowdery, Olson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to stalking and to violating a protective order; and amending Rules 4**
2 **and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."**

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

4 * **Section 1.** AS 11.56.740(a) is amended to read:

5 (a) A person commits the crime of violating a protective order if the person is
6 subject to a protective order

7 **(1) issued or filed under AS 18.66 and** containing a provision listed
8 in AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act with
9 reckless disregard that the act violates or would violate a provision of the protective
10 order; **or**

11 **(2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and**
12 **knowingly commits or attempts to commit an act in violation of the order.**

13 * **Sec. 2.** AS 11.56.740(c) is amended to read:

14 (c) In this section, "protective order" means an order issued or filed under

1 **AS 18.65.850 - 18.65.870 or** AS 18.66.100 - 18.66.180.

2 * **Sec. 3.** AS 18.65.530(a) is amended to read:

3 (a) Except as provided in (b) or (c) of this section, a peace officer, with or
4 without a warrant, shall arrest a person if the officer has probable cause to believe the
5 person has, either in or outside the presence of the officer, within the previous 12
6 hours,

7 (1) committed domestic violence, except an offense under
8 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

9 (2) committed the crime of violating a protective order in violation of
10 **AS 11.56.740(a)(1)** [AS 11.56.740];

11 (3) violated a condition of release imposed under AS 12.30.027.

12 * **Sec. 4.** AS 18.65.540(a) is amended to read:

13 (a) The Department of Public Safety shall maintain a central registry of
14 protective orders issued by or filed with a court of this state under **AS 18.65.850 -**
15 **18.65.870 or** AS 18.66.100 - 18.66.180. The registry must include for each protective
16 order the names of the petitioner and respondent, their dates of birth, and the
17 conditions and duration of the order. The registry shall retain a record of the
18 protective order after it has expired.

19 * **Sec. 5.** AS 18.65 is amended by adding new sections to read:

20 **Article 11. Stalking Protective Orders and Notifications to Stalking Victims.**

21 **Sec. 18.65.850. Protective orders for stalking.** (a) A person who reasonably
22 believes that the person is a victim of stalking that is not a crime involving domestic
23 violence may file a petition in the district or superior court for a stalking protective
24 order against a respondent who is alleged to have committed the stalking. A parent or
25 guardian may file a petition on behalf of a minor.

26 (b) When a petition for a protective order is filed, the court shall schedule a
27 hearing and provide at least 10 days' notice to the respondent of the hearing and of the
28 respondent's right to appear and be heard, either in person or through an attorney. If
29 the court finds by a preponderance of evidence that the respondent has committed
30 stalking against the petitioner, regardless of whether the respondent appears at the
31 hearing, the court may order any relief available under (c) of this section. The

1 provisions of a protective order issued under this section are effective for six months
2 unless earlier dissolved by the court.

3 (c) A protective order issued under this section may

4 (1) prohibit the respondent from threatening to commit or committing
5 stalking;

6 (2) prohibit the respondent from telephoning, contacting, or otherwise
7 communicating directly or indirectly with the petitioner or a designated household
8 member of the petitioner specifically named by the court;

9 (3) direct the respondent to stay away from the residence, school, or
10 place of employment of the petitioner, or any specified place frequented by the
11 petitioner; however, the court may order the respondent to stay away from the
12 respondent's own residence, school, or place of employment only if the respondent has
13 been provided actual notice of the opportunity to appear and be heard on the petition.

14 (d) If the court issues a protective order under this section, the court shall

15 (1) make reasonable efforts to ensure that the order is understood by
16 the petitioner and by the respondent, if present; and

17 (2) have the order delivered to the appropriate local law enforcement
18 agency for expedited service.

19 **Sec. 18.65.855. Ex parte and emergency protective orders for stalking.** (a)

20 A person who reasonably believes that the person is a victim of stalking that is not a
21 crime involving domestic violence may file a petition under AS 18.65.850 and request
22 an ex parte protective order. If the court finds that the petition establishes probable
23 cause that the crime of stalking has occurred, that it is necessary to protect the
24 petitioner from further stalking, and that the petitioner has certified to the court in
25 writing the efforts, if any, that have been made to provide notice to the respondent, the
26 court shall ex parte and without notice to the respondent issue a protective order. An
27 ex parte protective order under this section may grant the protection allowed by
28 AS 18.65.850(c). An ex parte protective order expires 20 days after it is issued unless
29 dissolved earlier by the court at the request of either the petitioner or the respondent
30 after notice and, if requested, a hearing. If the court issues an ex parte protective
31 order, the court shall have the order delivered to the appropriate law enforcement

1 agency for expedited service.

2 (b) A peace officer, on behalf of and with the consent of a victim of stalking
3 that is not a crime involving domestic violence, may request an emergency protective
4 order from a judicial officer. The request may be made orally or in writing based on
5 the sworn statement of a peace officer, and in person or by telephone. If the court
6 finds probable cause to believe that the petitioner is in immediate danger of stalking
7 based on an allegation of the recent commission of stalking, the court ex parte shall
8 issue an emergency protective order. An emergency protective order may grant the
9 protection allowed by AS 18.65.850(c). An emergency protective order expires 72
10 hours after it is issued unless dissolved earlier by the court at the request of the
11 petitioner. A peace officer who obtains an emergency protective order under this
12 section shall

13 (1) place the provisions of an oral order in writing on a form provided
14 by the court and file the written order with the issuing court by the end of the judicial
15 day after the order is issued;

16 (2) provide a copy of the order to the petitioner; and

17 (3) serve a copy of the order on the respondent.

18 **Sec. 18.65.860. Modification of protective orders for stalking.** (a) Either
19 the petitioner or the respondent may request modification of a protective order issued
20 under AS 18.65.850 or 18.65.855(a). If a request is made for modification of

21 (1) a protective order, after notice and hearing under AS 18.65.850, the
22 court shall schedule a hearing within 20 days after the date the request is made, except
23 that, if the court finds that the request is meritless on its face, the court may deny the
24 request without a hearing; or

25 (2) an ex parte protective order under AS 18.65.855(a), the court shall
26 schedule a hearing on three days' notice or on shorter notice as the court may
27 prescribe.

28 (b) If the court modifies a protective order under this section, the court shall
29 issue a modified order and shall

30 (1) make reasonable efforts to ensure that the order is understood by
31 the petitioner and by the respondent, if present at the hearing; and

(2) have the order delivered to the appropriate local law enforcement agency for expedited service.

Sec. 18.65.865. Service of process; forms for petitions and orders; fees; warnings; and notification. (a) Service of process of an order issued by the court under AS 18.65.850 - 18.65.860 shall be as provided in AS 18.66.160 for service of process of domestic violence protective orders.

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to \$5,000."

(c) The Department of Public Safety shall develop and make available to law enforcement agencies in the state a notice that details the rights of victims of stalking and the services available to them. The form must be similar to that provided to victims of domestic violence under AS 18.65.520. A peace officer investigating a stalking offense shall provide the form to the victim.

Sec. 18.65.870. Definitions. In AS 18.65.850 - 18.65.870,

(1) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(2) "household member" has the meaning given in AS 18.66.990;

(3) "stalking" means a violation of AS 11.41.260 or 11.41.270.

* **Sec. 6.** AS 18.66.990(3) is amended to read:

(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

(A) a crime against the person under AS 11.41;

(B) burglary under AS 11.46.300 - 11.46.310;

(C) criminal trespass under AS 11.46.320 - 11.46.330;

(D) arson or criminally negligent burning under AS 11.46.400 - 11.46.430;

(E) criminal mischief under AS 11.46.475 - 11.46.486;

(F) terrorist threatening under AS 11.56.807 or 11.56.810;

(G) violating a **protective** [DOMESTIC VIOLENCE] order under **AS 11.56.740(a)(1)** [AS 11.56.740]; or

(H) harassment under AS 11.61.120(a)(2) - (4);

* **Sec. 7.** AS 22.15.100(9) is amended to read:

(9) to issue a protective order in cases involving

(A) domestic violence as provided in AS 18.66.100 - 18.66.180; **or**

(B) stalking as provided in AS 18.65.850 - 18.65.870;

* **Sec. 8.** The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. (a) AS 18.65.865, added by sec. 5 of this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration, relating to fees and service of process for protective orders for victims of stalking.

(b) AS 18.65.850 - 18.65.870, added by sec. 5 of this Act, have the effect of amending Rule 65, Alaska Rules of Civil Procedure, relating to temporary restraining orders, the method of obtaining those orders, and the timing of those orders.