HOUSE BILL NO. 75

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE TARR

Introduced: 1/23/17
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to gun violence protective orders; relating to the crime of violating a protective order; relating to a central registry for protective orders; relating to the powers of district judges and magistrates; requiring physicians, psychologists, psychological associates, social workers, marital and family therapists, and licensed professional counselors to report annually threats of gun violence; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

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

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

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

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

order;

(2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly commits or attempts to commit an act that violates or would violate a provision listed in AS 18.65.850(c)(1) - (3); [OR]

(3) issued under AS 13.26.450 - 13.26.460 and knowingly commits or attempts to commit an act with reckless disregard that the act violates or would violate a provision of the protective order**; or**

(4) issued under AS 18.65.815 - 18.65.825 and knowingly commits or attempts to commit an act that violates or would violate a provision listed in AS 18.65.815(c).

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

(c) In this section, "protective order" means an order issued or filed under AS 13.26.450 - 13.26.460, **AS 18.65.815 - 18.65.825, 18.65.850 - 18.65.870** [AS 18.65.850 - 18.65.870], or AS 18.66.100 - 18.66.180.

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

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

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

(2) committed the crime of violating a protective order in violation of AS 11.56.740(a)(1)**,** [OR] (2)**, or (4)**;

(3) violated a condition of release imposed under AS 12.30.016(e) or (f) or 12.30.027.

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

(a) The Department of Public Safety shall maintain a central registry of protective orders issued by or filed with a court of this state under AS 13.26.450 - 13.26.460, **AS 18.65.815 - 18.65.825, 18.65.850 - 18.65.870** [AS 18.65.850 - 18.65.870], or AS 18.66.100 - 18.66.180. The registry must include, for each protective order, the names of the petitioner and respondent, their dates of birth, and

the conditions and duration of the order. The registry shall retain a record of the protective order after it has expired.

*** Sec. 5.** AS 18.65.540(b) is amended to read:

(b) A peace officer receiving a protective order from a court under AS 13.26.450, 13.26.455, **AS 18.65.815, 18.65.820, 18.65.850, 18.65.855** [AS 18.65.850 - 18.65.855], or AS 18.66.100 - 18.66.180, a modified order issued under AS 13.26.460, **AS 18.65.825, 18.65.860** [AS 18.65.860], or AS 18.66.120, or an order dismissing a protective order shall take reasonable steps to ensure that the order, modified order, or dismissal is entered into the central registry within 24 hours after being received.

*** Sec. 6.** AS 18.65 is amended by adding new sections to article 11 to read:

Sec. 18.65.815. Gun violence protective orders. (a) An immediate family member or a peace officer who reasonably believes that the respondent is a danger to self or others by possessing, owning, purchasing, or receiving a firearm may file a petition in the district or superior court for a protective order against a respondent. The petition shall describe the number, types, and locations of any firearms or ammunition the petitioner believes are owned or possessed by the respondent and the basis for the petition.

(b) When a petition for a protective order is filed, the court shall schedule a hearing and provide at least 10 days' notice to the respondent of the hearing and of the respondent's right to appear and be heard, either in person or through an attorney. If the court finds by clear and convincing evidence that the respondent is a danger to self or others by possessing, owning, purchasing, or receiving a firearm, regardless of whether the respondent appears at the hearing, the court may order the relief available under (c) of this section. The provisions of a protective order issued under this section are effective for six months unless earlier dissolved by the court.

(c) A protective order issued under this section shall prohibit the respondent from possessing, owning, purchasing, receiving, or attempting to purchase or receive a firearm or ammunition.

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

(1) make reasonable efforts to ensure that the order is understood by

the petitioner and by the respondent, if present;

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

(3) direct the respondent to surrender to the appropriate law enforcement agency or sell to a firearms dealer all firearms and ammunition that the respondent possesses or owns within 24 hours after receipt of the order.

Sec. 18.65.820. Ex parte and emergency gun violence protective orders. (a) An immediate family member of a respondent or a peace officer who reasonably believes that a respondent is a danger to self or others may file a petition under AS 18.65.815 and request an ex parte gun violence protective order. If the court finds that the petition establishes by a preponderance of the evidence that the respondent poses a significant danger of injury to self or others by possessing, owning, purchasing, or receiving a firearm, that less restrictive alternatives have been tried and were ineffective, and that the petitioner has certified to the court in writing the efforts, if any, that have been made to provide notice to the respondent, the court shall ex parte and without notice to the respondent issue a protective order. Before issuing the protective order, the court shall examine on oath the petitioner and any witnesses the petitioner produces. The court may require the petitioner and any witnesses to submit a written affidavit signed under oath instead of examining the petitioner and witnesses. An ex parte protective order under this subsection shall prohibit the respondent from possessing, owning, purchasing, or receiving a firearm or ammunition. An ex parte protective order expires 20 days after it is issued unless dissolved earlier by the court at the request of either the petitioner or the respondent after notice and, if requested, a hearing. If the court issues an ex parte protective order, the court shall have the order delivered to the appropriate law enforcement agency for expedited service.

(b) A peace officer may request an emergency gun violence protective order from a judicial officer. The request may be made orally or in writing based on the sworn statement of a peace officer, and in person or by telephone. If the court finds by a preponderance of the evidence that the respondent poses an immediate danger of injury to self or others by possessing, owning, purchasing, or receiving a firearm and that less restrictive alternatives have been tried and were ineffective, the court ex parte

shall issue an emergency protective order. An emergency protective order shall prohibit the respondent from possessing, owning, purchasing, or receiving a firearm or ammunition. An emergency protective order expires 72 hours after it is issued unless dissolved earlier by the court at the request of the petitioner. A peace officer who obtains an emergency protective order under this subsection shall

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

(2) immediately serve a copy of the order on the respondent.

Sec. 18.65.825. Modification of gun violence protective order. (a) Either the petitioner or the respondent may request modification of a gun violence protective order issued under AS 18.65.815 or 18.65.820(a). If a request is made for modification of

(1) a protective order, after notice and hearing under AS 18.65.815, the court shall schedule a hearing within 20 days after the date the request is made, except that, if the court finds that the request is meritless on its face, the court may deny the request without a hearing; or

(2) an ex parte protective order under AS 18.65.820(a), the court shall schedule a hearing on three days' notice or on shorter notice as the court may prescribe.

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

(1) make reasonable efforts to ensure that the order is understood by 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. 18.65.830. Surrender of firearms and ammunition. (a) When a court issues a gun violence protective order under AS 18.65.815 - 18.65.825, the court shall order the respondent to surrender to the appropriate local law enforcement agency or to sell to a firearms dealer all firearms and ammunition that the person possesses, owns, or has within the respondent's custody or control within 24 hours of receipt of

the protective order.

(b) Within 48 hours of receiving notice of the protective order, the respondent shall file with the

(1) court an original receipt showing that all firearms and ammunition have been surrendered to the local law enforcement agency or sold to a firearms dealer; and

(2) local law enforcement agency that served the protective order a copy of the receipt under (1) of this subsection.

(c) Any firearms or ammunition surrendered to a law enforcement agency under this section shall be retained by the law enforcement agency until the expiration of the gun violence protective order. When the protective order expires, the law enforcement agency shall return the firearms or ammunition to the respondent.

(d) A respondent who has surrendered firearms or ammunition to a law enforcement agency and does not want the firearms or ammunition returned may sell or transfer title of the firearms or ammunition to a firearms dealer.

(e) A person other than the respondent who claims title to any firearms or ammunition surrendered under a protective order issued under AS 18.65.815 - 18.65.825 may petition the court to have the firearms or ammunition returned to the person.

Sec. 18.65.835. Service of process; forms for petitions and orders; fees; warnings; notification; and pending civil or criminal actions. (a) Service of process of an order issued by the court under AS 18.65.815 - 18.65.825 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 18.65.815 - 18.65.825. 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 18.65.815 - 18.65.845. Each protective order form must contain the following statements in boldface type:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to $10,000"; and

(2) "To the restrained person: this order will last until the date and time noted above. You are required to surrender all firearms and ammunition that you own or possess in accordance with AS 18.65.835, and you may not have in your custody or control, own, purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order."

(c) In addition to other information required, a petition for a protective order must include a statement of pending civil and criminal actions involving either the petitioner or the respondent, if known. While a protective order is in effect or a petition for a protective order is pending, both the petitioner and respondent have a continuing duty to inform the court of pending civil and criminal actions involving either the petitioner or the respondent, if known.

Sec. 18.65.840. Notification of law enforcement agencies. When a court issues or accepts for filing a protective order under AS 18.65.815 - 18.65.825, the court shall send a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform peace officers of protective orders. Peace officers shall use every reasonable means to enforce a protective order issued or filed under AS 18.65.815 - 18.65.825.

Sec. 18.65.843. Health care providers; duty to report serious threats of gun violence. Annually, a health care provider shall report to the Department of Health and Social Services any serious threat conveyed to the health care provider during the year of gun violence against a reasonably identifiable victim. The health care provider may not include any personally identifiable information in the report and shall make the report on or before December 31 of each year. The Department of Health and Social Services shall summarize the reports received under this section in an annual report and submit the report on or before January 31 to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available. The Department of Health and Social Services may not include any

personally identifiable information in the report. In this section, "health care provider" means a physician, psychologist, psychological associate, social worker, marital and family therapist, or licensed professional counselor.

Sec. 18.65.845. Definition. In AS 18.65.815 - 18.65.840, "immediate family member" means a spouse, child, stepchild, parent, or stepparent.

*** Sec. 7.** AS 22.15.100 is amended to read:

Sec. 22.15.100. Functions and powers of district judge and magistrate. Each district judge and magistrate has the power

(1) to issue writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, returnable before a judge of the superior court, and the same proceedings shall be had on the writ as if it had been granted by the superior court judge under the laws of the state in **those** [SUCH] cases;

(2) of a notary public;

(3) to solemnize marriages;

(4) to issue warrants of arrest, summons, and search warrants according to manner and procedure prescribed by law and the supreme court;

(5) to act as an examining judge or magistrate in preliminary examinations in criminal proceedings; to set, receive, and forfeit bail and to order the release of defendants under bail;

(6) to act as a referee in matters and actions referred to the judge or magistrate by the superior court, with all powers conferred upon referees by laws;

(7) of the superior court in all respects including but not limited to contempts, attendance of witnesses, and bench warrants;

(8) to order the temporary detention of a minor, or take other action authorized by law or rules of procedure, in cases arising under AS 47.10 or AS 47.12, when the minor is in a condition or surrounding dangerous or injurious to the welfare of the minor or others that requires immediate action; the action may be continued in effect until reviewed by the superior court in accordance with rules of procedure governing these cases;

(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 or sexual assault as provided in AS 18.65.850 - 18.65.870; **or**

(C) gun violence as provided in AS 18.65.815 - 18.65.825;

(10) to review an administrative revocation of a person's driver's license or nonresident privilege to drive, and an administrative refusal to issue an original license, when designated as a hearing officer by the commissioner of administration and with the consent of the administrative director of the Alaska Court System;

(11) to establish the fact of death or inquire into the death of a person in the manner prescribed under AS 09.55.020 - 09.55.069;

(12) to issue an ex parte testing, examination, or screening order according to the manner and procedure prescribed by AS 18.15.375.

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

INDIRECT COURT RULE AMENDMENTS. (a) AS 18.65.835, added by sec. 6 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 a gun violence protective order.

(b) The provisions of sec. 6 of this Act have the effect of amending Rule 65, Alaska Rules of Civil Procedure, by changing the method for obtaining, and the timing of, temporary restraining orders.

*** Sec. 9.** AS 18.65.843 is repealed February 1, 2020.

*** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. AS 18.65.815 - 18.65.845, added by sec. 6 of this Act, take effect only if sec. 8 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.