

CS for House Bill 75 (JUD)
Sectional Analysis—Version R

Section 1.

AS 11.56.740(a) – Violating a protective order.

Makes violating a gun violence protective order as described in section 7 a Class A misdemeanor.

Section 2.

AS 11.56.740(c) – Violating a protective order.

Adds the definition of a gun violence protective order created in section 7 to the list of definitions in Alaska's criminal code.

Section 3.

AS 12.35 – Search and Seizure.

Adds a new section to AS 12.35 allowing for the warrantless seizure of a firearm from an individual believed to be dangerous, with reference to the procedures in AS 18.65.815 – 18.65.845 in the event of such a seizure.

Section 4.

AS 18.65.530(a) – Mandatory arrest for crimes involving domestic violence, violation of protective orders, and violation of conditions of release.

Allows a peace officer to arrest a person, with or without a warrant, who violates a gun violence protective order.

Section 5.

AS 18.65.540(a) – Central registry of protective orders.

Adds a conforming amendment to existing powers of the Department of Public Safety to add this to their existing central registry for a gun violence protective order. 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 Department of Public Safety shall retain a record of the protective order after it has expired.

Section 6.

AS 18.65.540(b) – Central registry of protective orders.

Adds a conforming amendment to existing powers of the Department of Public Safety to take reasonable steps to report that the order, modified order, or dismissal is entered into the central registry within 24 hours after being received.

Section 7.

Amends AS 18.65 to add seven new sections. The likely use of the gun violence protective order starts with an ex parte order under Sec. 18.65.820:

Sec. 18.65.820. – Ex parte gun violence protective orders.

Allows a peace officer to request an ex parte gun violence protective order. If the court finds that the petition establishes probable cause to believe that the respondent is a dangerous individual,

the court shall ex parte and without notice to the respondent issue a protective order. Defines how that order would be created.

Following the ex parte order and service of the order, a contested or 20-day hearing would occur.

Sec. 18.65.815 – Gun Violence Protective Orders.

Allows a peace officer to file a petition for a protective order against a respondent if they reasonably believe that the respondent is a dangerous individual.

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. The notice of the hearing must inform the respondent of the option to waive the hearing. The notice must inform the respondent that if the respondent does not appear at the hearing, the respondent will have six months to request a hearing regarding the protective order.

A protective order issued under this section expires six months after it is issued unless dissolved earlier by the court at the request of either the peace officer or the respondent after notice and, if requested, a hearing. 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.

If the court issues a protective order under this section, the court shall direct the respondent to surrender to the appropriate law enforcement agency, sell to a firearms dealer, or deliver to a court-approved third party all firearms and ammunition that the respondent possesses or owns within 48 hours after receipt of the order.

Sec. 18.65.825. – Modification of gun violence protective order.

Allows the peace officer or the respondent to request modification of the gun violence protective order. Describes how to modify the order.

Sec. 18.65.830. – Surrender of firearms and ammunition.

Allows the court to order the respondent to temporarily surrender or sell all firearms and ammunition within 48 hours of receipt of the protective order. When the protective order is terminated or expires, the law enforcement agency shall notify the respondent that return of the firearms or ammunition to the respondent is available.

Sec. 18.65.835. – Service of process; forms for petitions and orders; fees; warnings; notification; and pending civil or criminal actions.

Requires the Alaska Court System to prepare forms to file this protective order, without charging filing fees. Establishes that violating the order is a misdemeanor, punishable by up to one year of incarceration and a fine of up to \$25,000. Clarifies that the respondent is not entitled to court-appointed counsel employed at the public's expense to contest the order.

Sec. 18.65.840. – Notification of law enforcement agencies.

Requires the court to notify local law enforcement of the order so it can be enforced.

Sec. 18.65.845. – Dangerous Individual

Defines a definition of a dangerous individual for the purposes of filing a petition for a gun violence protective order.

Section 8.

AS 22.15.100 – Functions and powers of district judge and magistrate.

Adds a conforming amendment to existing powers of district judges and magistrates to be able to administer this new gun violence emergency protective order.

Section 9.

AS 22.35.030 – Records concerning criminal cases resulting in acquittal or dismissal.

Amends AS 22.35.030 to add a new subsection (b) stating that the Alaska Court System may not publish a court record of an ex parte protective order on a publicly available website.

Section 10.

Indirect Court Rules Amendments – Lists court rules that are affected by the bill relating to court fees and the process for issuing protective orders.

Section 11.

Conditional Effects – Sections 1-9 of this legislation only take effect if Section 10 gets a two-thirds majority vote of each house of the Alaska Legislature, which is required by art. IV, sec. 15, Constitution of the State of Alaska.

Section 12.

Provides for an effective date of October 1, 2018.