

30-LS0304R
Martin
3/26/18

CS FOR HOUSE BILL NO. 75(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES TARR, Spohnholz, Drummond, Seaton, Josephson, Wool

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to gun violence protective orders; relating to the crime of violating a**
2 **protective order; relating to seizures of firearms from dangerous individuals without a**
3 **warrant; relating to a central registry for protective orders; relating to the powers of**
4 **district judges and magistrates; restricting publication of gun violence protective orders**
5 **on a publicly available website; amending Rules 4 and 65, Alaska Rules of Civil**
6 **Procedure, and Rule 9, Alaska Rules of Administration; and providing for an effective**
7 **date."**

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

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

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

12 (1) issued, filed, or recognized under AS 18.66 and containing a
13 provision listed in AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to

1 commit an act with reckless disregard that the act violates or would violate a provision
2 of the protective order;

3 (2) issued or recognized under AS 18.65.850, 18.65.855, 18.65.860, or
4 18.65.867 and knowingly commits or attempts to commit an act that violates or would
5 violate a provision listed in AS 18.65.850(c)(1) - (3); [OR]

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

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

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

13 (c) In this section, "protective order" means an order issued, filed, or
14 recognized under AS 13.26.450 - 13.26.460, **AS 18.65.815 - 18.65.825, 18.65.850 -**
15 **18.65.870** [AS 18.65.850 - 18.65.870], or AS 18.66.100 - 18.66.180.

16 * **Sec. 3.** AS 12.35 is amended by adding a new section to read:

17 **Sec. 12.35.200. Warrantless seizure of a firearm from an individual**
18 **believed to be dangerous.** (a) If a peace officer seizes a firearm from an individual
19 whom the peace officer believes to be dangerous without obtaining a search warrant,
20 the peace officer shall file a petition under AS 18.65.815 within 72 hours after the
21 seizure.

22 (b) At the time of a seizure under this section, the peace officer shall read a
23 notice and deliver a copy of the notice to the individual. The notice must advise the
24 individual

25 (1) that the peace officer will file with the court a petition under
26 AS 18.65.815 within 72 hours after the seizure;

27 (2) that the individual has the right to appear at a hearing scheduled
28 under AS 18.65.815 and contest the seizure; and

29 (3) of the time and date of the court hearing.

30 (c) Nothing in this section authorizes a peace officer to perform a warrantless
31 search or seizure if a warrant would otherwise be required.

1 (d) In this section, an individual is considered dangerous if the individual
2 meets the criteria in AS 18.65.845.

3 * **Sec. 4.** AS 18.65.530(a) is amended to read:

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

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

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

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

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

15 (a) The Department of Public Safety shall maintain a central registry of
16 protective orders issued by or filed with a court of this state under AS 13.26.450 -
17 13.26.460, AS 18.65.815 - 18.65.825, 18.65.850 - 18.65.870 [AS 18.65.850 -
18 18.65.870], or AS 18.66.100 - 18.66.180. The registry must include, for each
19 protective order, the names of the petitioner and respondent, their dates of birth, and
20 the conditions and duration of the order. The registry shall retain a record of the
21 protective order after it has expired.

22 * **Sec. 6.** AS 18.65.540(b) is amended to read:

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

30 * **Sec. 7.** AS 18.65 is amended by adding new sections to article 11 to read:

31 **Sec. 18.65.815. Gun violence protective orders.** (a) A peace officer who

1 reasonably believes that a respondent is a dangerous individual may file a petition in
2 the district or superior court for a protective order against the respondent. The petition
3 shall describe the number, types, and locations of any firearms or ammunition the
4 peace officer believes are owned or possessed by the respondent and the basis for the
5 petition.

6 (b) When a petition for a protective order is filed, the court shall schedule a
7 hearing and provide at least 10 days' notice to the respondent of the hearing and of the
8 respondent's right to appear and be heard, either in person or through an attorney. The
9 notice of the hearing provided to the respondent must inform the respondent of the
10 respondent's option to waive the hearing and allow for the waiver to be mailed to the
11 court. The notice must inform the respondent that if the respondent does not appear at
12 the hearing, the respondent will have six months to request a hearing regarding the
13 protective order. If the court finds by clear and convincing evidence that the
14 respondent is a dangerous individual, regardless of whether the respondent appears at
15 the hearing, the court may order the relief available under (c) of this section. A
16 protective order issued under this section expires six months after it is issued unless
17 dissolved earlier by the court at the request of either the peace officer or the
18 respondent after notice and, if requested, a hearing.

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

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

23 (1) make reasonable efforts to ensure that the order is understood by
24 the respondent, if present;

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

27 (3) direct the respondent to surrender to the appropriate law
28 enforcement agency, sell to a firearms dealer, or deliver to a court-approved third
29 party all firearms and ammunition that the respondent possesses within 48 hours after
30 receipt of the order.

31 **Sec. 18.65.820. Ex parte gun violence protective orders.** (a) A peace officer

1 who reasonably believes that a respondent is a dangerous individual may file a petition
2 under AS 18.65.815 and request an ex parte gun violence protective order. If the court
3 finds that the petition establishes probable cause to believe that the respondent is a
4 dangerous individual, that less restrictive alternatives have been tried and were
5 ineffective, and that the peace officer has certified to the court in writing the efforts, if
6 any, that have been made to provide notice to the respondent, the court shall ex parte
7 and without notice to the respondent issue a protective order. Before issuing the
8 protective order, the court shall examine on oath the peace officer and any witnesses
9 the peace officer produces. The court may require the peace officer and any witnesses
10 to submit a written affidavit signed under oath instead of examining the peace officer
11 and witnesses. An ex parte protective order under this subsection shall prohibit the
12 respondent from possessing, purchasing, or receiving a firearm or ammunition. An ex
13 parte protective order expires 20 days after it is issued unless dissolved earlier by the
14 court at the request of either the peace officer or the respondent after notice and, if
15 requested, a hearing. If the court issues an ex parte protective order, the court shall
16 have the order delivered to the appropriate law enforcement agency for expedited
17 service.

18 (b) If a peace officer has not seized the firearms of the respondent before filing
19 an ex parte gun violence protective order under this section, the peace officer shall
20 also request a search warrant to search for and seize any firearms in the possession of
21 the respondent. The court shall grant the request for a search warrant if the judicial
22 officer determines that there is probable cause to believe that the respondent is a
23 dangerous individual and in possession of a firearm.

24 (c) If the peace officer has seized the firearms of the respondent under
25 AS 12.35.200 before filing an ex parte protective order under this section, the court
26 shall determine whether there is probable cause to believe that the respondent is
27 dangerous at the time of the hearing. If the court finds that the respondent is
28 dangerous, the court shall order the law enforcement agency with custody of the
29 firearm to retain the firearm. If the court finds there is not probable cause to believe
30 that the individual is dangerous, the court shall order the law enforcement agency with
31 custody of the firearm to return the firearm to the respondent.

1 **Sec. 18.65.825. Modification of gun violence protective order.** (a) Either the
2 peace officer or the respondent may request modification of a gun violence protective
3 order issued under AS 18.65.815 or 18.65.820(a). If a request is made for modification
4 of

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

9 (2) an ex parte protective order under AS 18.65.820, the court shall
10 schedule a hearing on three days' notice or on shorter notice as the court may
11 prescribe. The court shall provide notice of the hearing to the respondent, the
12 appropriate law enforcement agency, and the prosecuting attorney.

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

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

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

19 **Sec. 18.65.830. Surrender of firearms and ammunition.** (a) When a court
20 issues a gun violence protective order under AS 18.65.815 - 18.65.825, the court shall
21 order the respondent to surrender to the appropriate local law enforcement agency, to
22 sell to a firearms dealer, or to deliver to a court-approved third party all firearms and
23 ammunition that the respondent possesses or has within the respondent's custody or
24 control within 48 hours of receipt of the protective order. If the respondent's firearms
25 have not already been seized, a peace officer may seize any firearms in the possession,
26 custody, or control of the respondent when the peace officer delivers an ex parte
27 protective order issued under AS 18.65.820 to the respondent.

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

30 (1) court an original receipt showing that all firearms and ammunition
31 in the respondent's possession, custody, or control have been surrendered to the local

1 law enforcement agency, sold to a firearms dealer, or delivered to a court-approved
2 third party; and

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

5 (c) Any firearms or ammunition surrendered to a law enforcement agency
6 under this section shall be retained by the law enforcement agency until the expiration
7 of the gun violence protective order. A law enforcement agency storing firearms under
8 this section shall use reasonable care to ensure that firearms are not damaged. When
9 the protective order is terminated or expires, the law enforcement agency shall notify
10 the respondent as soon as practicable, but in no event later than 72 hours after the
11 protective order is terminated or expires, that return of the firearms or ammunition to
12 the respondent is available.

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

16 (e) A person other than the respondent who claims title to any firearms or
17 ammunition surrendered under a protective order issued under AS 18.65.815 -
18 18.65.825 may petition the court to have the firearms or ammunition returned to the
19 person.

20 **Sec. 18.65.835. Service of process; forms for petitions and orders; fees;**
21 **warnings; notification; and pending civil or criminal actions.** (a) Service of
22 process of an order issued by the court under AS 18.65.815 - 18.65.825 shall be as
23 provided in AS 18.66.160 for service of process of domestic violence protective
24 orders.

25 (b) The Alaska Court System shall prepare forms for petitions and protective
26 orders and instructions for their use by a peace officer seeking a protective order under
27 AS 18.65.815 - 18.65.825. The forms must conform to the Alaska Rules of Civil
28 Procedure, except that information on the forms may be filled in by legible
29 handwriting. Filing fees may not be charged in any action seeking only the relief
30 provided in AS 18.65.815 - 18.65.845. Each protective order form must contain the
31 following statements in boldface type:

1 (1) "Violation of this order may be a misdemeanor, punishable by up
2 to one year of incarceration and a fine of up to \$25,000"; and

3 (2) "To the restrained person: this order will last until the date and time
4 noted above. You are required to surrender all firearms and ammunition that you
5 possess or have custody or control over in accordance with AS 18.65.830, and you
6 may not have in your custody or control, purchase, possess, receive, or attempt to
7 purchase or receive, a firearm or ammunition while this order is in effect. You may
8 seek the advice of an attorney as to any matter connected with the order. The attorney
9 should be consulted promptly so that the attorney may assist you in any matter
10 connected with the order. You are not entitled to court-appointed counsel employed at
11 the public's expense to contest the order."

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

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

24 **Sec. 18.65.845. Dangerous individual.** (a) For purposes of AS 18.65.815 -
25 18.65.845, an individual is considered dangerous if the individual presents

26 (1) an immediate risk of personal injury to self or others; or
27 (2) a risk of personal injury to self or others in the future and the
28 individual

29 (A) has a mental illness for which the individual has been
30 prescribed medication that the individual has demonstrated a pattern of not
31 voluntarily and consistently taking while not under supervision; or

1 (B) is the subject of documented evidence that would give rise
2 to a reasonable belief that the individual has a propensity for violence or
3 unstable conduct.

4 (b) The fact that an individual has been released from a mental health facility
5 or has a mental illness for which the individual has been prescribed medication does
6 not determine that an individual is dangerous for purposes of AS 18.65.815 -
7 18.65.845.

8 * **Sec. 8.** AS 22.15.100 is amended to read:

9 **Sec. 22.15.100. Functions and powers of district judge and magistrate.**

10 Each district judge and magistrate has the power

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

15 (2) of a notary public;

16 (3) to solemnize marriages;

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

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

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

24 (7) of the superior court in all respects including contempts, attendance
25 of witnesses, and bench warrants;

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

1 (9) to issue a protective order in cases involving

2 (A) domestic violence as provided in AS 18.66.100 -
3 18.66.180; [OR]

4 (B) stalking or sexual assault as provided in AS 18.65.850 -
5 18.65.870; **or**

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

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

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

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

16 * **Sec. 9.** AS 22.35.030 is amended by adding a new subsection to read:

17 (b) The Alaska Court System may not publish a court record of a protective
18 order issued under AS 18.65.820 on a publicly available website.

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

21 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 18.65.835, added by sec. 7 of
22 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,
23 Alaska Rules of Administration, relating to fees and service of process for a gun violence
24 protective order.

25 (b) The provisions of sec. 7 of this Act have the effect of amending Rule 65, Alaska
26 Rules of Civil Procedure, by changing the method for obtaining, and the timing of, temporary
27 restraining orders.

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

30 **CONDITIONAL EFFECT.** AS 11.56.740(a) and (c), as amended by secs. 1 and 2 of
31 this Act, AS 12.35.200, added by sec. 3 of this Act, AS 18.65.530(a), as amended by sec. 4 of

1 this Act, AS 18.65.540(a) and (b), as amended by secs. 5 and 6 of this Act, AS 18.65.815 -
2 18.65.845, added by sec. 7 of this Act, AS 22.15.100, as amended by sec. 8 of this Act, and
3 AS 22.35.030(b), added by sec. 9 of this Act, take effect only if sec. 10 of this Act receives
4 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the
5 State of Alaska.

6 * **Sec. 12.** This Act takes effect October 1, 2018.