

HOUSE BILL NO. 439

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/18/98

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to protection of victims of domestic violence and stalking;
2 relating to the crimes of stalking and assault and crimes involving domestic
3 violence; relating to violation of a protective order, no contact order, and certain
4 testing orders; relating to bail and conditions of release in cases involving certain
5 stalkings; relating to search warrants; relating to authorized sentences and factors
6 in aggravation and mitigation; relating to conditions of probation and parole for
7 convictions of certain crimes; relating to revocation of parole; and amending Rules
8 32 and 38, Alaska Rules of Criminal Procedure."

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

10 * **Section 1.** AS 11.41.220(a) is amended to read:

11 (a) A person commits the crime of assault in the third degree if that person

12 (1) recklessly

1 (A) places another person in fear of imminent serious physical
2 injury by means of a dangerous instrument;

3 (B) causes physical injury to another person by means of a
4 dangerous instrument; or

5 (C) while being 18 years of age or older

6 (i) causes physical injury to a child under 10 years of
7 age and the injury reasonably requires medical treatment;

8 (ii) causes physical injury to a child under 10 years of
9 age on more than one occasion;

10 (2) with intent to place another person in fear of death or serious
11 physical injury to the person or the person's family member makes repeated threats to
12 cause death or serious physical injury to another person; [OR]

13 (3) while being 18 years of age or older, knowingly causes physical
14 injury to a child under 16 years of age but at least 10 years of age and the injury
15 reasonably requires medical treatment; or

16 (4) commits assault in the fourth degree in violation of
17 AS 11.41.230 and the commission of the offense is also in violation of a protective
18 order issued against the person under AS 18.66.100 - 18.66.180 or 18.66.400 -
19 18.66.480.

20 * **Sec. 2.** AS 11.41.260(a) is amended to read:

21 (a) A person commits the crime of stalking in the first degree if the person
22 violates AS 11.41.270 and

23 (1) the actions constituting the offense are in violation of an order
24 issued or filed under AS 18.66.100 - 18.66.180 or **18.66.400 - 18.66.480** [ISSUED
25 UNDER FORMER AS 25.35.010(b) OR 25.35.020];

26 (2) the actions constituting the offense are in violation of a condition
27 of probation, release before trial, release after conviction, or parole;

28 (3) the victim is under 16 years of age;

29 (4) at any time during the course of conduct constituting the offense
30 the defendant possessed a deadly weapon;

31 (5) the defendant has been previously convicted of a crime under this

1 section, AS 11.41.270, [OR] AS 11.56.740, 11.56.750, or 11.56.755, or a law or
 2 ordinance of this or another jurisdiction with elements similar to a crime under this
 3 section, AS 11.41.270, [OR] AS 11.56.740, 11.56.750, or 11.56.755; or

4 (6) the defendant has been previously convicted of a crime, or an
 5 attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250,
 6 11.41.300 - 11.41.460, AS 11.56.810, AS 11.61.120, or (B) a law or an ordinance of
 7 this or another jurisdiction with elements similar to a crime, or an attempt or
 8 solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460,
 9 AS 11.56.810, or AS 11.61.120, involving the same victim as the present offense.

10 * **Sec. 3.** AS 11.46.300(a) is amended to read:

11 (a) A person commits the crime of burglary in the first degree if the person

12 (1) violates AS 11.46.310 and

13 (A) [(1)] the building is a dwelling; or

14 (B) [(2)] in effecting entry or while in the building or
 15 immediate flight from the building, the person

16 (i) [(A)] is armed with a firearm;

17 (ii) [(B)] causes or attempts to cause physical injury to
 18 a person; or

19 (iii) [(C)] uses or threatens to use a dangerous
 20 instrument; or

21 (2) enters or remains unlawfully in a dwelling and, while in the
 22 dwelling, commits stalking or a crime involving domestic violence.

23 * **Sec. 4.** AS 11.46.300 is amended by adding a new subsection to read:

24 (c) In this section,

25 (1) "domestic violence" and "crime involving domestic violence" have
 26 the meaning given in AS 18.66.990;

27 (2) "stalking" means a violation of AS 11.41.260 or 11.41.270 that is
 28 not a crime involving domestic violence.

29 * **Sec. 5.** AS 11.56 is amended by adding new sections to read:

30 **Sec. 11.56.750. Violating a protective order for stalking.** (a) A person
 31 commits the crime of violating a protective order for stalking if the person is subject

1 to a protective order for stalking containing a provision listed in AS 18.66.400(c)(1) -
2 (6) and knowingly commits or attempts to commit an act in violation of that provision.

3 (b) Violation of this section is a class A misdemeanor.

4 (c) In this section, "protective order for stalking" means an order issued under
5 AS 18.66.400 - 18.66.480.

6 **Sec. 11.56.755. Violating a no contact order.** (a) A person commits the
7 crime of violating a no contact order if the person

8 (1) has been ordered not to contact a victim or witness of the offense
9 as

10 (A) part of a sentence imposed under AS 12.55.015; or

11 (B) as a condition of

12 (i) release under AS 12.30.025 or 12.30.027;

13 (ii) probation under AS 12.55.101 or 12.55.103; or

14 (iii) parole under AS 33.16.150; and

15 (2) either directly or indirectly, knowingly contacts or attempts to
16 contact the victim or witness in violation of the order.

17 (b) Violating a no contact order is a class A misdemeanor.

18 **Sec. 11.56.760. Violating an order to submit to DNA testing.** (a) A person
19 commits the crime of violating an order to submit to DNA testing if, upon request of
20 a health care professional acting on behalf of the state, the person refuses to provide
21 a blood sample, oral sample, or both, and

22 (1) the person has been ordered to submit to DNA testing as part of a
23 sentence imposed under AS 12.55.015; or

24 (2) the person has been convicted of an offense that requires the state
25 to collect a blood sample, oral sample, or both, for DNA testing under the provisions
26 of AS 44.41.035.

27 (b) Violating an order to submit to DNA testing is a class A misdemeanor.

28 (c) In this section, "DNA testing" means the collection of a blood sample, oral
29 sample, or both, for the deoxyribonucleic acid identification registration system under
30 AS 44.41.035.

31 * **Sec. 6.** AS 12.30.025(a) is amended to read:

1 (a) **Before ordering release before, during, or after trial, or pending appeal**
 2 [IN DETERMINING THE CONDITIONS OF RELEASE UNDER AS 12.30.020] in
 3 cases involving stalking but not domestic violence, the court shall consider **the safety**
 4 **of the alleged victim and the public. To protect the alleged victim and the public**
 5 **and to reasonably assure the defendant's appearance, the court may impose bail,**
 6 **any of** the conditions specified in AS 12.30.020 **and AS 18.66.400(c)(3) - (6),** [AND
 7 THE FOLLOWING CONDITIONS] and **any other condition** [IMPOSE ONE OR
 8 MORE CONDITIONS] it considers necessary to protect the alleged victim **and the**
 9 **public** [OF THE STALKING], including ordering the defendant

10 (1) not to subject the victim to further stalking;

11 (2) not to contact the victim other than through counsel;

12 (3) to engage in counseling; if the court directs the defendant to engage
 13 in personal counseling, the court shall provide in the order that the counseling must
 14 propose alternatives to aggression if that type of counseling is available;

15 (4) to refrain from the consumption of alcohol or the use of drugs.

16 * **Sec. 7.** AS 12.35.010(a) is amended to read:

17 (a) A judicial officer may issue a search warrant upon a showing of probable
 18 cause, supported by oath or affirmation, and particularly describing the place to be
 19 searched and the thing to be seized, **or describing a communication to be monitored**
 20 **and recorded.**

21 * **Sec. 8.** AS 12.35.010 is amending by adding a new subsection to read:

22 (c) If otherwise authorized under this chapter, a judicial officer may issue a
 23 search warrant to monitor and record a communication if one party to the
 24 communication consents. A judicial officer may issue the search warrant before a
 25 nonconsenting party to the communication is charged with the offense for which the
 26 evidence is being sought under the warrant.

27 * **Sec. 9.** AS 12.35.020 is amended to read:

28 **Sec. 12.35.020. Grounds for issuance.** A search warrant may be issued if the
 29 judicial officer reasonably believes any of the following:

30 (1) that the property was stolen or embezzled;

31 (2) that the property was used as a means of committing a crime;

1 (3) that the property is in the possession of a person who intends to use
 2 it as the means of committing a crime, or in possession of another to whom the person
 3 may have delivered it for the purpose of concealing it or preventing its being
 4 discovered;

5 (4) that the property constitutes evidence of a particular crime or tends
 6 to show that a certain person has committed a particular crime;

7 (5) **that a communication to be monitored and recorded may**
 8 **provide evidence of or may assist in the apprehension of persons who have**
 9 **committed, are committing, or are planning to commit, a violation of state or**
 10 **municipal law;**

11 (6) [(5)] that either reasonable legislative or administrative standards
 12 for conducting a routine or area inspection with regard to air pollution are satisfied
 13 with respect to the particular place, dwelling, structure, premises, or vehicle, or there
 14 is reason to believe that a condition of nonconformity exists with respect to the
 15 particular place, dwelling, structure, premises, or vehicle.

16 * **Sec. 10.** AS 12.35.120 is amended to read:

17 **Sec. 12.35.120. Definition of search warrant.** A search warrant is an order
 18 in writing, signed by a judge or magistrate or signed at the direction of a judicial
 19 officer in accordance with AS 12.35.015, directed to a peace officer, commanding the
 20 peace officer to search for personal property **or to arrange to monitor and record**
 21 **a communication,** and bring [IT] before the judge or magistrate

22 (1) **the property or an inventory of the property seized; or**

23 (2) **a list of the date, time, and parties to the communication**
 24 **monitored and recorded.**

25 * **Sec. 11.** AS 12.55.015(a) is amended to read:

26 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
 27 sentence on a defendant convicted of an offense, may singly or in combination

28 (1) impose a

29 (A) fine when authorized by law and as provided in
 30 AS 12.55.035; or

31 (B) day fine when authorized by law and as provided in

1 AS 12.55.036, if the court does not impose a term of periodic or continuous
2 imprisonment or place the defendant on probation;

3 (2) order the defendant to be placed on probation under conditions
4 specified by the court that may include provision for active supervision;

5 (3) impose a definite term of periodic imprisonment;

6 (4) impose a definite term of continuous imprisonment;

7 (5) order the defendant to make restitution under AS 12.55.045;

8 (6) order the defendant to carry out a continuous or periodic program
9 of community work under AS 12.55.055;

10 (7) suspend execution of all or a portion of the sentence imposed under
11 AS 12.55.080;

12 (8) suspend imposition of sentence under AS 12.55.085;

13 (9) order the forfeiture to the commissioner of public safety or a
14 municipal law enforcement agency of a deadly weapon that was in the actual
15 possession of or used by the defendant during the commission of an offense described
16 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

17 (10) order the defendant, while incarcerated, to participate in or comply
18 with the treatment plan of a rehabilitation program that is related to the defendant's
19 offense or to the defendant's rehabilitation if the program is made available to the
20 defendant by the Department of Corrections;

21 (11) order the forfeiture to the state of a motor vehicle, weapon,
22 electronic communication device, or money or other valuables, used in or obtained
23 through an offense that was committed for the benefit of, at the direction of, or in
24 association with a criminal street gang;

25 **(12) order the defendant to have no contact, either directly or**
26 **indirectly, with a victim or witness of the offense until the defendant is**
27 **unconditionally discharged.**

28 * **Sec. 12.** AS 12.55.015 is amended by adding a new subsection to read:

29 (i) In addition to the penalties authorized by this section, the court shall order
30 a person convicted of an offense requiring the state to collect a blood sample, oral
31 sample, or both, for the deoxyribonucleic acid identification registration system under

1 AS 44.41.035, to submit to the collection of the samples upon the request of a health
2 care professional acting on behalf of the state.

3 * **Sec. 13.** AS 12.55.100 is amended by adding a new subsection to read:

4 (d) If the court orders probation for a defendant convicted of an offense
5 requiring the state to collect a blood sample, oral sample, or both, from the defendant
6 for the deoxyribonucleic acid (DNA) identification registration system under
7 AS 44.41.035, the court shall order the defendant as a condition of probation to submit
8 to the collection of the samples upon the request of a health care professional acting
9 on behalf of the state.

10 * **Sec. 14.** AS 12.55 is amended by adding a new section to read:

11 **Sec. 12.55.103. Additional conditions of probation in stalking cases.** (a)
12 Before granting probation to a person convicted of stalking, the court shall consider
13 the safety and protection of the victim. If a person convicted of stalking is placed on
14 probation, the court may order the conditions authorized in AS 12.55.100 and
15 AS 18.66.400(c)(1) - (8) and (10) - (12).

16 (b) In this section, "stalking" means a violation of AS 11.41.260 or 11.41.270
17 that is not a crime involving domestic violence.

18 * **Sec. 15.** AS 12.55.155(c) is amended by adding a new paragraph to read:

19 (30) the defendant's prior criminal history includes a conviction for a
20 misdemeanor committed outside this state that would have been a felony if committed
21 in this state.

22 * **Sec. 16.** AS 12.55.155(d) is amended by adding a new paragraph to read:

23 (18) the defendant is convicted of an offense under AS 11.41, and
24 alleviated the impact of the offense on the victim by

25 (A) pleading guilty or no contest to the offense no later than 10
26 days after the defendant's first appearance in court for the offense; and

27 (B) making a clear and forthright admission of culpability for
28 the offense.

29 * **Sec. 17.** AS 18.65.510(a) is amended to read:

30 (a) Each established police training program in the state shall provide training
31 that acquaints police officers with

1 (1) laws relating to substantive crimes and rules of criminal procedure
2 applicable in cases involving domestic violence **or stalking**;

3 (2) techniques for handling incidents of domestic violence **or stalking**
4 that promote the safety of the victim and the officer and that reduce the likelihood of
5 recurrence;

6 (3) the investigation and management of cases involving domestic
7 violence **or stalking**, and report writing for those cases;

8 (4) organizations in the state that offer aid or shelter to victims of
9 domestic violence;

10 (5) procedures applicable in the prosecution of cases involving domestic
11 violence **or stalking**;

12 (6) orders that may be issued by or filed with a court under
13 AS 18.66.100 - 18.66.180 **or 18.66.400 - 18.66.480**;

14 (7) the notification to be given to victims of domestic violence **or**
15 **stalking** under AS 18.65.520; and

16 (8) the subjects set out in AS 18.66.310(d).

17 * **Sec. 18.** AS 18.65.520 is amended by adding a new subsection to read:

18 (d) A peace officer investigating a crime of stalking shall inform the victim
19 of the rights of victims of stalking. The notice shall be in substantially the following
20 form:

21 You have the right to file a petition in court requesting a protective order that
22 may include any of the following provisions:

23 (1) prohibit the stalker from further stalking you;

24 (2) prohibit the stalker from telephoning, contacting, or otherwise
25 communicating with you, either directly or indirectly;

26 (3) direct the stalker to stay away from your residence, school, place
27 of employment, or any other specified place where you are frequently present;

28 (4) prohibit the stalker from entering a propelled vehicle in your
29 possession or occupied by you;

30 (5) prohibit the stalker from using or possessing a deadly weapon;

31 (6) direct the stalker to surrender any firearm owned or possessed by

1 the stalker;

2 (7) require the stalker to reimburse you for expenses associated with
3 the stalking, including medical expenses, counseling, shelter, and repair or replacement
4 of damaged property;

5 (8) prohibit the stalker from consuming alcohol or controlled
6 substances;

7 (9) order the stalker to pay costs and fees incurred by you in obtaining
8 a protective order;

9 (10) order the stalker to participate in treatment for the abuse of alcohol
10 or controlled substances, or both;

11 (11) order the stalker to participate in personal counseling; and

12 (12) order other relief the court determines necessary to protect you.

13 * **Sec. 19.** AS 18.65 is amended by adding a new section to read:

14 **Sec. 18.65.535. Mandatory arrest for stalking, violation of protective**
15 **orders for stalking, and violation of conditions of release.** (a) Except as provided
16 in (b) of this section, a peace officer, with or without a warrant, shall arrest a person
17 if the officer has probable cause to believe that the person has, either in or outside the
18 presence of the officer, within the previous 12 hours,

19 (1) committed stalking, whether the offense is a felony or
20 misdemeanor;

21 (2) committed the crime of violating a protective order for stalking in
22 violation of AS 11.56.750; or

23 (3) violated a condition of release imposed under AS 12.30.025.

24 (b) A peace officer is not required to make an arrest under (a) of this section
25 if the officer has received authorization not to arrest from a prosecuting attorney in the
26 jurisdiction in which the offense is under investigation.

27 (c) In addition to the contents of any other report, a peace officer who does
28 not make an arrest after investigating a complaint of stalking shall describe in writing
29 the reasons for not making an arrest.

30 (d) A person may not bring a civil action for damages for failure to comply
31 with the provisions of this section.

1 * **Sec. 20.** AS 18.65.540(a) is amended to read:

2 (a) The Department of Public Safety shall maintain a central registry of
3 protective orders issued by or filed with a court of this state under AS 18.66.100 -
4 18.66.180 or 18.66.400 - 18.66.480. The registry must include for each protective
5 order the names of the petitioner and respondent, their dates of birth, and the
6 conditions and duration of the order. The registry shall retain a record of the
7 protective order after it has expired.

8 * **Sec. 21.** AS 18.65.540(b) is amended to read:

9 (b) A peace officer receiving a protective order from a court under
10 AS 18.66.100 - 18.66.180 or 18.66.400 - 18.66.480, a modified order issued under
11 AS 18.66.120 or 18.66.420, or an order dismissing a protective order, must take
12 reasonable steps to ensure that the order, modified order, or dismissal is entered into
13 the central registry within 24 hours after being received.

14 * **Sec. 22.** AS 18.65.590 is amended to read:

15 **Sec. 18.65.590. Definitions [DEFINITION].** In AS 18.65.510 - 18.65.590,

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

17 (2) "stalking" means a violation of AS 11.41.260 or 11.41.270 that
18 is not a crime involving domestic violence.

19 * **Sec. 23.** AS 18.66.100(c)(14) is amended to read:

20 (14) require the respondent to pay costs and fees incurred by the
21 petitioner in bringing the action under this section [CHAPTER];

22 * **Sec. 24.** AS 18.66.100(e) is amended to read:

23 (e) A court may not deny a petition for a protective order under this section
24 solely because of a lapse of time between an act of domestic violence and the filing
25 of the petition. If a lapse of time includes a period of incarceration or probation
26 or parole supervision of the respondent, the court may consider this lapse in favor
27 of granting the petition.

28 * **Sec. 25.** AS 18.66.110(d) is amended to read:

29 (d) A court may not deny a petition for an ex parte protective order filed under
30 (a) of this section solely because of a lapse of time between an act of domestic
31 violence and the filing of the petition. If a lapse of time includes a period of

1 **incarceration or probation or parole supervision of the respondent, the court may**
2 **consider this lapse in favor of granting the petition.**

3 * **Sec. 26.** AS 18.66.120(a) is amended to read:

4 (a) Either the petitioner or the respondent may request modification of a
5 protective order **issued under AS 18.66.100 - 18.66.180**. If a request is made for
6 modification of

7 (1) an ex parte protective order under AS 18.66.110(a), the court shall
8 schedule a hearing on three days' notice or on shorter notice as the court may
9 prescribe; the court shall hear and rule on the request in an expeditious manner; or

10 (2) a protective order after notice and hearing under AS 18.66.100(b),
11 the court shall schedule a hearing within 20 days after the date the request is made,
12 except that if the court finds that the request is meritless on its face, the court may
13 deny the request without further hearing.

14 * **Sec. 27.** AS 18.66.130(b) is amended to read:

15 (b) A court may not grant protective orders **issued under AS 18.66.100 -**
16 **18.66.180** against the petitioner and the respondent in the same action [UNDER THIS
17 CHAPTER].

18 * **Sec. 28.** AS 18.66.130(e) is amended to read:

19 (e) A protective order issued under **AS 18.66.100 - 18.66.180** [THIS
20 CHAPTER] is in addition to and not in place of any other civil or criminal remedy.
21 A petitioner is not barred from seeking an order under AS 18.66.100 - 18.66.180
22 because of the existence of another civil action between the petitioner and respondent.

23 * **Sec. 29.** AS 18.66.150(a) is amended to read:

24 (a) The Alaska Court System, after consulting with the Council on Domestic
25 Violence and Sexual Assault and other interested persons and organizations, shall
26 prepare forms for petitions, protective orders, and instructions for their use by a person
27 seeking a protective order under **AS 18.66.100 - 18.66.180** [THIS CHAPTER].

28 * **Sec. 30.** AS 18.66.150(b) is amended to read:

29 (b) In addition to other information required, a petition for a protective order
30 **issued under AS 18.66.100 - 18.66.180** must include a statement of pending civil
31 actions or domestic violence criminal actions involving either the petitioner or the

1 respondent. While a protective order issued under AS 18.66.100 - 18.66.180 is in
2 effect or a petition for a protective order under AS 18.66.100 - 18.66.180 is pending,
3 both the petitioner and respondent have a continuing duty to inform the court of
4 pending civil actions or domestic violence criminal actions involving either the
5 petitioner or the respondent.

6 * **Sec. 31.** AS 18.66.150(d) is amended to read:

7 (d) Filing fees may not be charged in any action seeking only the relief
8 provided in AS 18.66.100 - 18.66.180 [THIS CHAPTER].

9 * **Sec. 32.** AS 18.66.160 is amended to read:

10 **Sec. 18.66.160. Service of process.** (a) Process issued under AS 18.66.100 -
11 18.66.180 [THIS CHAPTER] shall be promptly served and executed. If process is to
12 be served upon a person believed to be present or residing in a municipality, as
13 defined in AS 29.71.800, or in an unincorporated community, process shall be served
14 by a peace officer of that municipality or unincorporated community who has
15 jurisdiction within the area of service. If a peace officer of the municipality or
16 unincorporated community who has jurisdiction is not available, a superior court,
17 district court, or magistrate may designate any other peace officer to serve and execute
18 process. A state peace officer shall serve process in any area that is not within the
19 jurisdiction of a peace officer of a municipality or unincorporated community. A
20 peace officer shall use every reasonable means to serve process issued under
21 AS 18.66.100 - 18.66.180 [THIS CHAPTER].

22 (b) Service of process under (a) of this section does not preclude a petitioner
23 from using any other available means to serve process issued under AS 18.66.100 -
24 18.66.180 [THIS CHAPTER].

25 (c) Fees for service of process may not be charged in a proceeding seeking
26 only the relief provided in AS 18.66.100 - 18.66.180 [THIS CHAPTER].

27 * **Sec. 33.** AS 18.66.170 is amended to read:

28 **Sec. 18.66.170. Notification of law enforcement agencies.** When a court
29 issues or accepts for filing a protective order under AS 18.66.100 - 18.66.180 [THIS
30 CHAPTER], it shall send a copy of the order to the appropriate local law enforcement
31 agency. Each law enforcement agency shall establish procedures to inform peace

1 officers of protective orders. Peace officers shall use every reasonable means to
2 enforce a protective order issued or filed under AS 18.66.100 - 18.66.180 [THIS
3 CHAPTER].

4 * **Sec. 34.** AS 18.66.180 is amended to read:

5 **Sec. 18.66.180. Civil liability.** A person may not bring a civil action for
6 damages against the state, its officers, agents, or employees, or a law enforcement
7 agency, its officers, agents, or employees for any failure to comply with the provisions
8 of AS 18.66.100 - 18.66.180 [THIS CHAPTER].

9 * **Sec. 35.** AS 18.66.250(1) is amended to read:

10 (1) "confidential communication" means information exchanged
11 between a victim and a victim counselor in private or in the presence of a third party
12 who is necessary to facilitate communication or further the counseling process and that
13 is disclosed in the course of victim counseling resulting from a sexual assault, **stalking**
14 **that is not a crime involving domestic violence,** or domestic violence;

15 * **Sec. 36.** AS 18.66.250(3) is amended to read:

16 (3) "victim" means a person who consults a victim counselor for
17 assistance in overcoming adverse effects of a sexual assault, **stalking that is not a**
18 **crime involving domestic violence,** or domestic violence;

19 * **Sec. 37.** AS 18.66.250(4) is amended to read:

20 (4) "victim counseling" means support, assistance, advice, or treatment
21 to alleviate the adverse effects of a sexual assault, **stalking that is not a crime**
22 **involving domestic violence,** or domestic violence;

23 * **Sec. 38.** AS 18.66.250(5) is amended to read:

24 (5) "victim counseling center" means a private organization or a local
25 government agency that

26 (A) has as one of its primary purposes the provision of direct
27 services to victims for trauma resulting from a sexual assault, **stalking that is**
28 **not a crime involving domestic violence,** or domestic violence;

29 (B) is not affiliated with a law enforcement agency or a
30 prosecutor's office; and

31 (C) is not on contract with the state to provide services under

1 AS 47;

2 * **Sec. 39.** AS 18.66.250(6) is amended to read:

3 (6) "victim counselor" means an employee or supervised volunteer of
4 a victim counseling center that provides counseling to victims

5 (A) who has undergone a minimum of 40 hours of training in
6 domestic violence, **stalking that is not a crime involving domestic violence,**
7 or sexual assault, crisis intervention, victim support, treatment and related
8 areas; or

9 (B) whose duties include victim counseling.

10 * **Sec. 40.** AS 18.66 is amended by adding new sections to read:

11 **Article 4A. Protective Orders for Stalking.**

12 **Sec. 18.66.400. Protective orders for stalking; eligible petitioners; relief.**

13 (a) A person who is or who has been a victim of stalking, and the alleged stalker is
14 not a household member of the person, may file a petition in the district or superior
15 court for a protective order for stalking. A parent, guardian, or other representative
16 appointed by the court may file a petition for a protective order on behalf of a minor.
17 The court may appoint a guardian ad litem or attorney to represent the minor.

18 (b) When a petition for a protective order for stalking is filed, the court shall
19 schedule a hearing, and provide at least 10 days' notice to the respondent of the
20 hearing and of the respondent's right to appear and be heard, either in person or by an
21 attorney. If the court finds by a preponderance of evidence that the respondent has
22 committed the crime of stalking against the petitioner, regardless of whether the
23 respondent appears at the hearing, the court may order any relief available under (c)
24 of this section.

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

26 (1) prohibit the respondent from stalking the petitioner;

27 (2) prohibit the respondent from telephoning, contacting, or otherwise
28 communicating directly or indirectly with the petitioner;

29 (3) direct the respondent to stay away from the residence, school, place
30 of employment, or any other specified place where the petitioner is frequently present;

31 (4) prohibit the respondent from entering a propelled vehicle in the

1 possession of or occupied by the petitioner;

2 (5) prohibit the respondent from using or possessing a deadly weapon;

3 (6) direct the respondent to surrender any firearm owned or possessed
4 by the respondent;

5 (7) require the respondent to reimburse the petitioner or other person
6 for expenses associated with the stalking, including medical expenses, counseling,
7 shelter, and repair or replacement of damaged property;

8 (8) prohibit the respondent from consuming alcohol or controlled
9 substances;

10 (9) order the respondent to pay costs and fees incurred by the petitioner
11 in obtaining a protective order;

12 (10) order the respondent, at the respondent's expense, to participate
13 in treatment for the abuse of alcohol or controlled substances, or both;

14 (11) order the respondent, at the respondent's expense, to participate
15 in personal counseling; and

16 (12) order other relief the court determines necessary to protect the
17 petitioner.

18 (d) The provisions of a protective order issued under

19 (1) subsection (c)(1) of this section are effective until further order of
20 the court; and

21 (2) subsections (c)(2) - (12) are effective for six months unless earlier
22 dissolved by the court.

23 (e) If the court issues a protective order under this section, it shall

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

26 (2) have the order delivered to the appropriate local law enforcement
27 agency for expedited service and for entry into the central registry of protective orders
28 under AS 18.65.540.

29 (f) A court may not deny a petition for a protective order under this section
30 solely because of a lapse of time between an act of stalking and the filing of the
31 petition. If a lapse of time includes a period of incarceration or probation or parole

1 supervision of the respondent, the court may consider this lapse in favor of granting
2 the petition.

3 **Sec. 18.66.410. Ex parte and emergency protective orders for stalking.** (a)

4 A person who is a victim of stalking may file a petition under AS 18.66.400(a) and
5 request an ex parte protective order for stalking. If the court finds probable cause that
6 stalking has occurred and that it is necessary to protect the petitioner from stalking, the
7 court shall ex parte and without notice to the respondent issue a protective order. An
8 ex parte protective order may grant the protection provided by AS 18.66.400(c)(1) -
9 (4), (8), and (12). An ex parte protective order expires 20 days after it is issued unless
10 dissolved earlier by the court as provided in AS 18.66.420. If the court issues an ex
11 parte protective order, the court shall have the order delivered to the appropriate local
12 law enforcement agency for expedited service and for entry into the central registry
13 of protective orders under AS 18.65.540.

14 (b) A peace officer, on behalf of and with the consent of a stalking victim,
15 may request an emergency protective order for stalking from a judicial officer. The
16 request may be made orally or in writing based upon the sworn statement of the peace
17 officer, and in person or by telephone. If the court finds probable cause to believe that
18 the victim is in immediate danger of stalking based on an allegation of the recent
19 commission of stalking, the court ex parte shall issue an emergency protective order
20 for stalking. In the order, the court may grant the protection provided in
21 AS 18.66.400(c)(1) - (4), (8), and (12). An emergency order expires 72 hours after
22 it is issued unless dissolved earlier by the court at the request of the petitioner.

23 (c) A peace officer who obtains a protective order for stalking under (b) of this
24 section shall

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

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

29 (3) serve a copy of the order on the respondent; and

30 (4) comply with the requirements of AS 18.65.540 for ensuring that the
31 order is entered into the central registry of protective orders under AS 18.65.540.

1 (d) A court may not deny a petition for an ex parte protective order for
2 stalking filed under (a) of this section solely because of a lapse of time between the
3 stalking and the filing of the petition. If a lapse of time includes a period of
4 incarceration or probation or parole supervision of the respondent, the court may
5 consider this lapse in favor of granting the petition.

6 **Sec. 18.66.420. Modification of protective orders for stalking.** (a) Except
7 for an order under AS 18.66.410(b), either the petitioner or the respondent may request
8 modification of a protective order for stalking. If a request is made for modification
9 of

10 (1) an ex parte protective order under AS 18.66.410(a), the court shall
11 schedule a hearing on three days' notice or on shorter notice as the court may
12 prescribe; the court shall hear and rule on the request in an expeditious manner; or

13 (2) a protective order after notice and hearing under AS 18.66.400(a),
14 the court shall schedule a hearing within 20 days after the date the request is made,
15 except that if the court finds that the request is without merit on its face, the court may
16 deny the request without further hearing.

17 (b) If a request for modification is made under this section and the respondent
18 raises an issue not raised by the petitioner, the court may allow the petitioner
19 additional time to respond.

20 (c) If the court modifies a protective order under this section, it shall issue a
21 modified order and shall

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

24 (2) have the order delivered to the appropriate local law enforcement
25 agency for expedited service and for entry into the central registry of protective orders
26 under AS 18.65.540.

27 **Sec. 18.66.430. Specific protective orders for stalking.** (a) If a respondent
28 in a protective order issued under AS 18.66.400 - 18.66.480 is prohibited from
29 contacting the petitioner, communicating with the petitioner, or is ordered to stay away
30 from the petitioner as provided by AS 18.66.400(c)(1) - (4), an invitation by the
31 petitioner to communicate, enter a vehicle, or have other prohibited contact with the

1 petitioner does not waive or nullify any provision in a protective order.

2 (b) A court may not grant protective orders against both the petitioner and the
3 respondent in the same action under AS 18.66.400 - 18.66.480.

4 (c) A court may not order parties into mediation or refer them to mediation
5 for resolution of the issues arising from a petition for a protective order under
6 AS 18.66.400 - 18.66.480.

7 (d) In addition to other required information contained in a protective order
8 issued under AS 18.66.400 - 18.66.480, the order must include in bold face type the
9 following statements:

10 (1) "Violation of this order may be a misdemeanor, punishable by up
11 to one year of incarceration and up to a \$5,000 fine;"

12 (2) "If you are ordered to have no contact with the petitioner or to stay
13 away from the petitioner's residence, vehicle, or other place designated by the court,
14 that order is still valid, even if you are invited by the petitioner to have prohibited
15 contact or to be present at or enter the residence, vehicle, or other place in the order.
16 You may be charged with a misdemeanor for violating the order."

17 (e) A protective order issued under AS 18.66.400 - 18.66.480 is in addition to
18 and not in place of any other civil or criminal remedy. A petitioner is not barred from
19 seeking a protective order under AS 18.66.400 -18.66.480 because of the existence of
20 another civil action between the petitioner and respondent.

21 **Sec. 18.66.440. Filing and enforcement of protective orders issued in other**
22 **states.** (a) A certified copy of an unexpired protective order for stalking issued in
23 another jurisdiction may be filed with the clerk of court in any judicial district in the
24 state.

25 (b) A protective order filed in accordance with (a) of this section has the same
26 effect and must be enforced in the same manner as a protective order for stalking
27 issued by a court of this state.

28 (c) When a protective order is filed with the court under this section, the court
29 shall have the order delivered to the appropriate local law enforcement agency for
30 entry into the central registry of protective orders under AS 18.65.540.

31 **Sec. 18.66.450. Forms for petitions and orders; fees.** (a) The Alaska Court

1 System, after consulting with the Council on Domestic Violence and Sexual Assault,
2 shall prepare forms for petitions, protective orders for stalking, and instructions for
3 their use by a person seeking a protective order for stalking. The forms must conform
4 to the Alaska Rules of Civil Procedure, except that information on the forms may be
5 filled in by legible handwriting.

6 (b) The office of the clerk of each superior and district court shall make
7 available to the public the forms a person seeking a protective order under
8 AS 18.66.400 - 18.66.480 may need and instructions for the use of the forms. The
9 clerk shall provide assistance in completing the forms and filing the forms.

10 (c) Filing fees may not be charged in any action seeking only the relief
11 provided by AS 18.66.400 - 18.66.480.

12 **Sec. 18.66.460. Service of process.** Process issued for protective orders for
13 stalking shall be served and executed as provided in AS 18.66.160 for protective orders
14 for domestic violence. Fees for service of process may not be charged in a proceeding
15 seeking only the relief provided in AS 18.66.400 - 18.66.480.

16 **Sec. 18.66.470. Notification of law enforcement agencies.** When a court
17 issues or accepts for filing a protective order for stalking issued under AS 18.66.400 -
18 18.66.480, it shall send a copy of the order to the appropriate local law enforcement
19 agency. Each law enforcement agency shall establish procedures to inform peace
20 officers of these orders. Peace officers shall use every reasonable means to enforce
21 a protective order for stalking issued or filed under AS 18.66.400 - 18.66.480.

22 **Sec. 18.66.480. Definition.** In AS 18.66.400 - 18.66.480 "stalking" means a
23 violation of AS 11.41.260 or 11.41.270 that is not a crime involving domestic violence.

24 * **Sec. 41.** AS 18.66.990(2) is amended to read:

25 (2) "crisis intervention and prevention program" means a community
26 program that provides information, education, counseling, and referral services to
27 individuals experiencing personal crisis related to domestic violence, **stalking that is**
28 **not a crime involving domestic violence**, or sexual assault and to individuals in
29 personal or professional transition, excluding correctional half-way houses, outpatient
30 mental health programs, and drug or alcohol rehabilitation programs;

31 * **Sec. 42.** AS 18.66.990(8) is repealed and reenacted to read:

1 (8) "petitioner" means

2 (A) in AS 18.66.100 - 18.66.180, a person filing a petition
3 under 18.66.100 - 18.66.180, including a person on whose behalf an emergency
4 protective order has been requested under AS 18.66.110(b); or

5 (B) in AS 18.66.400 - 18.66.480, a person filing a petition
6 under AS 18.66.400 - 18.66.480, including a person on whose behalf an
7 emergency protective order has been requested under AS 18.66.410(b);

8 * **Sec. 43.** AS 18.66.990 is amended by adding new paragraphs to read:

9 (11) "protective order for stalking" means an order under
10 AS 18.66.400 - 18.66.480;

11 (12) "stalking" means, except as provided in AS 18.66.400 - 18.66.480,
12 a violation of AS 11.41.260 or 11.41.270.

13 * **Sec. 44.** AS 33.16.150(a) is amended to read:

14 (a) As a condition of parole, a prisoner released on special medical,
15 discretionary, or mandatory parole

16 (1) shall obey all state, federal, or local laws or ordinances, and any
17 court orders applicable to the parolee;

18 (2) shall make diligent efforts to maintain steady employment or meet
19 family obligations;

20 (3) shall, if involved in education, counseling, training, or treatment,
21 continue in the program unless granted permission from the parole officer assigned to
22 the parolee to discontinue the program;

23 (4) shall report

24 (A) upon release to the parole officer assigned to the parolee;

25 (B) at other times, and in the manner, prescribed by the board
26 or the parole officer assigned to the parolee;

27 (5) shall reside at a stated place and not change that residence without
28 notifying, and receiving permission from, the parole officer assigned to the parolee;

29 (6) shall remain within stated geographic limits unless written
30 permission to depart from the stated limits is granted the parolee;

31 (7) may not use, possess, handle, purchase, give, distribute, or

1 administer a controlled substance as defined in AS 11.71.900 or under federal law or
 2 a drug for which a prescription is required under state or federal law without a
 3 prescription from a licensed medical professional to the parolee;

4 (8) may not possess or control a firearm; in this paragraph, "firearm"
 5 has the meaning given in AS 11.81.900;

6 (9) may not enter into an agreement or other arrangement with a law
 7 enforcement agency or officer that will place the parolee in the position of violating
 8 a law or parole condition without the prior approval of the board;

9 (10) may not contact or correspond with anyone confined in a
 10 correctional facility of any type serving any term of imprisonment or a felon without
 11 the permission of the parole officer assigned to a parolee;

12 (11) shall agree to waive extradition from any state or territory of the
 13 United States and to not contest efforts to return the parolee to the state;

14 **(12) shall provide a blood sample, an oral sample, or both upon the**
 15 **request of a health care professional acting on behalf of the state if the prisoner**
 16 **is being released after a conviction of an offense requiring the state to collect the**
 17 **samples for the deoxyribonucleic acid identification registration system under**
 18 **AS 44.41.035.**

19 * **Sec. 45.** AS 33.16.150 is amended by adding a new subsection to read:

20 (g) In addition to other conditions of parole imposed under this section, the
 21 board may impose as a condition of special medical, discretionary, or mandatory parole
 22 for a prisoner serving a term for stalking (1) any of the terms for protective orders
 23 under AS 18.66.400(c)(1) - (6) and (12); and (2) any other condition necessary to
 24 rehabilitate the prisoner. The board shall establish procedures for the exchange of
 25 information concerning the parolee with the victim and for responding to reports of
 26 nonattendance or noncompliance by the parolee with conditions imposed under this
 27 subsection.

28 * **Sec. 46.** AS 33.16.220(a) is amended to read:

29 (a) The board may revoke parole, **either before or after the person's actual**
 30 **release on parole,** if the **person** [PAROLEE]

31 (1) engages in conduct in violation of AS 33.16.150(a), (b), or (f); or

1 (2) has violated an order of the court to participate in or comply with
2 the treatment plan of a rehabilitation program under AS 12.55.015(a)(10).

3 * **Sec. 47.** AS 33.16.900 is amended by adding a new paragraph to read:

4 (14) "stalking" means a violation of AS 11.41.260 or 11.41.270 that is
5 not a crime involving domestic violence.

6 * **Sec. 48.** Rule 32, Alaska Rules of Criminal Procedure, is amended by adding a new
7 subsection to read:

8 (e) **Judgment for Crime Against a Person.** In a case in which the defendant
9 is convicted of a crime against a person as defined in AS 44.41.035(j), the written
10 judgment must set out the requirements of AS 12.55.015(i).

11 * **Sec. 49.** Rule 38.1(a), Alaska Rules of Criminal Procedure, is amended to read:

12 (a) In any proceeding at which the defendant's presence is required under
13 Criminal Rule 38(a), as modified by Rule 38.2, the defendant may waive the right to
14 be present and request to participate by telephone. The defendant's waiver of the right
15 to be physically present may be obtained orally on the record or in writing. The court
16 may allow telephonic participation of one or more parties, counsel or the judge at any
17 proceeding in its discretion. The court **shall** [MAY] allow telephonic participation of
18 witnesses **and counsel** at bail hearings, omnibus hearings, probation revocation
19 hearings, **and other hearings except trials, if the witness or counsel would be**
20 **required to travel more than 50 miles to the site of the hearing, or lives in a place**
21 **from which people customarily travel by air to the site of the hearing. The court**
22 **may allow telephonic participation of witnesses** [OR] at trial with the consent of the
23 prosecution and the defendant. [THE COURT MAY ALLOW TELEPHONIC
24 PARTICIPATION OF WITNESSES AT OTHER HEARINGS IN ITS DISCRETION.]

25 * **Sec. 50.** Section 48 of this Act takes effect only if sec. 48 of this Act receives the two-
26 thirds majority of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

27 * **Sec. 51.** Section 49 of this Act takes effect only if sec. 49 of this Act receives the two-
28 thirds majority of each house required by art. IV, sec. 15, Constitution of the State of Alaska.