

HOUSE BILL NO. 366

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/11/00

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rights of crime victims, the crime of violating a
2 protective order or injunction, mitigating factors in sentencing for an offense, and
3 the return of certain seized property to victims; expanding the scope of the
4 prohibition of compromise based on civil remedy of misdemeanor crimes involving
5 domestic violence; amending Rules 10, 11, 13, 16, and 17, Alaska District Court
6 Rules of Civil Procedure and Rule 9, Alaska Rules of Administration."

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

8 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
9 section to read:

10 **INTENT AND PURPOSE OF THIS ACT.** The intent and purpose of this Act are to

11 (1) advance public safety by facilitating the prosecution of criminals;

12 (2) further implement art. I, sec. 24, of the Alaska Constitution, to protect the
13 rights of crime victims; and

1 (3) protect the public by expanding the scope of the prohibition of compromise
2 of certain crimes by certain domestic violence victims because of a civil remedy.

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

4 (a) A person commits the crime of violating a protective order **or a protective**
5 **injunction** if the person is

6 (1) subject to a protective order containing a provision listed in
7 AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act in
8 violation of that provision; **or**

9 (2) **subject to a protective injunction issued under AS 47.17.069 and**
10 **knowingly commits or attempts to commit an act in violation of the injunction.**

11 * **Sec. 3.** AS 12.36 is amended by adding a new section to read:

12 **Sec. 12.36.070. Property seized from pawnbroker or secondhand dealer.**

13 (a) Property that a law enforcement agency has obtained from a pawnbroker or
14 secondhand dealer and that is possessed by a law enforcement agency in connection
15 with an investigation of the wrongful taking of the property shall be disposed of as
16 provided in this section.

17 (b) If the pawnbroker or secondhand dealer waives the right to notice of the
18 disposition of the property, the property may be returned to the victim of the offense
19 as provided in AS 12.36.010 - 12.36.060 and 12.36.090.

20 (c) If the pawnbroker or secondhand dealer requests notice of the disposition
21 of the property, the law enforcement agency shall provide to the pawnbroker or
22 secondhand dealer and to the victim of the offense notice of intent to dispose of the
23 property, and the names and addresses of the persons notified.

24 (d) A victim who receives notice under (c) of this section may file in the
25 district court a petition for return of the property on a form provided by the court. The
26 petition must be supported by an affidavit setting out the basis for the claim to
27 ownership of the property. The petition must be filed within 30 days after receipt of
28 the notice given under (c) of this section. The victim must submit proof that a copy
29 of the petition and affidavit has been served on the pawnbroker or secondhand dealer
30 and on the law enforcement agency that possesses the property. If a petition is not
31 filed in accordance with this subsection, the property may be returned to the

1 pawnbroker or secondhand dealer.

2 (e) Within 30 days after the filing of a petition under (d) of this section, the
3 pawnbroker or secondhand dealer may file a response to the petition and a supporting
4 affidavit rebutting the victim's claim of ownership, and must include with the response
5 a copy of the records of the transaction involving the property required under
6 AS 08.76. The pawnbroker or secondhand dealer must submit proof that a copy of the
7 response, affidavit, and records has been served on the victim and on the law
8 enforcement agency that possesses the property. If a response is not filed in
9 accordance with this subsection, the property may be returned to the victim.

10 (f) In a proceeding under this section or another proceeding concerning
11 ownership of the property, if the victim claims ownership of the property in
12 accordance with (d) of this section, the pawnbroker or secondhand dealer has the
13 burden of proving by a preponderance of the evidence that the victim is not the owner
14 of the property. Good faith purchase of the property by the pawnbroker or secondhand
15 dealer from another person is not relevant to ownership of the property. For purposes
16 of this section, "good faith purchase" means the purchase for money or other
17 consideration without knowledge that the property was wrongfully taken or that the
18 victim claims ownership in the property.

19 (g) The district court may decide ownership based on the documents filed
20 under this section unless a party requests a hearing or the court on its own motion
21 finds that a hearing is necessary to resolve the matter. If a hearing is held, the district
22 court may treat the petition, response, and affidavits as documents in support of
23 pleadings and the matter may be heard as a small claim under AS 22.15.040. If either
24 party claims that the value of the property exceeds the jurisdictional amount for a
25 small claim, the parties may proceed in the appropriate court under the applicable rules
26 of court.

27 (h) Filing fees may not be charged for filing a petition or a response to a
28 petition under this section.

29 (i) A person may not bring a civil action against the court, a law enforcement
30 agency, the state, or a subdivision of the state, or their officers, agents, or employees
31 concerning property disposed of under this section if the court, law enforcement

1 agency, state, subdivision of the state, or their officers, agents, or employees have in
2 good faith substantially complied with the provisions of this section.

3 (j) In this section, "pawnbroker or secondhand dealer" means a person engaged
4 in the business of buying and selling secondhand articles, or lending money on
5 secondhand articles, except a bank or other financial institution.

6 * **Sec. 4.** AS 12.45.120 is amended to read:

7 **Sec. 12.45.120. Authority to compromise misdemeanors for which victim**
8 **has civil action.** If a defendant is held to answer on a charge of misdemeanor for
9 which the person injured by the act constituting the crime has a remedy by a civil
10 action, the crime may be compromised except when it [WAS COMMITTED]

11 (1) was committed by or upon a peace officer, judge, or magistrate
12 while in the execution of the duties of that office;

13 (2) was committed riotously;

14 (3) was committed with an intent to commit a felony;

15 (4) was committed larcenously;

16 (5) is a crime involving domestic violence [AGAINST

17 (A) A SPOUSE OR A FORMER SPOUSE OF THE
18 DEFENDANT;

19 (B) A PARENT, GRANDPARENT, CHILD, OR
20 GRANDCHILD OF THE DEFENDANT;

21 (C) A MEMBER OF THE SOCIAL UNIT COMPRISED OF
22 THOSE LIVING TOGETHER IN THE SAME DWELLING AS THE
23 DEFENDANT; OR

24 (D) A PERSON WHO IS NOT A SPOUSE OR FORMER
25 SPOUSE OF THE DEFENDANT BUT WHO PREVIOUSLY LIVED IN A
26 SPOUSAL RELATIONSHIP WITH THE DEFENDANT].

27 * **Sec. 5.** AS 12.45.120 is amended by adding a new subsection to read:

28 (b) In this section, "crime involving domestic violence" has the meaning given
29 in AS 18.66.990.

30 * **Sec. 6.** AS 12.55.155(d) is amended by adding a new paragraph to read:

31 (18) in a conviction for an offense, the defendant reduced the impact

1 of the offense on the victim by entering a plea of guilty or no contest within 30 days
2 of being arraigned on the charge.

3 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **INDIRECT COURT RULE CHANGE.** (a) The provisions of sec. 3 of this Act have
6 the effect of amending Rules 10, 11, 13, 16, and 17, Alaska District Court Rules of Civil
7 Procedure, by providing procedures for small claims actions regarding property seized from
8 a pawnbroker or second-hand dealer.

9 (b) Section 3 of this Act takes effect only if (a) of this section receives the two-thirds
10 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

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

13 **INDIRECT COURT RULE CHANGE.** (a) The provisions of AS 12.36.070(h),
14 enacted by sec. 3 of this Act, have the effect of amending Rule 9, Alaska Rules of
15 Administration, by prohibiting the court from setting an administrative fee for the filing of a
16 petition or response in accordance with AS 12.36.070, enacted by sec. 3 of this Act.

17 (b) AS 12.36.070(h), enacted by sec. 3 of this Act, takes effect only if (a) of this
18 section receives the two-thirds majority vote of each house required by art. IV, sec. 15,
19 Constitution of the State of Alaska.

20 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section
21 to read:

22 **APPLICABILITY.** (a) The changes made by sec. 2 of this Act apply to acts
23 committed on or after the effective date of this Act.

24 (b) Section 3 of this Act applies to property that remains in the possession of a law
25 enforcement agency and that was seized before, on, or after the effective date of this Act.