

CS FOR HOUSE BILL NO. 366(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/3/00

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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, enforcement of protective orders, mitigating factors
3 in sentencing for an offense, and the return of certain seized property to victims;
4 expanding the scope of the prohibition of compromise based on civil remedy of
5 misdemeanor crimes involving domestic violence; and amending Rules 10, 11, 13,
6 16, and 17, Alaska District Court Rules of Civil Procedure, and Rule 9, Alaska
7 Rules of Administration."

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

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

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

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

13 (2) further implement art. I, sec. 24, Constitution of the State of Alaska to

1 protect the rights of crime victims; and

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

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

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

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

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

12 * **Sec. 3.** AS 11.56.740(c) is amended to read:

13 (c) In this section, "protective order" means an order issued or filed under
14 AS 18.66.100 - 18.66.180 **or issued by another state under laws substantially**
15 **similar to AS 18.66.100 - 18.66.180.**

16 * **Sec. 4.** AS 12.36 is amended by adding a new section to read:

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

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

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

25 (c) If the pawnbroker or secondhand dealer requests notice of the disposition
26 of the property, the law enforcement agency shall provide to the pawnbroker or
27 secondhand dealer and to the victim of the offense notice of intent to dispose of the
28 property and the names and addresses of the persons notified.

29 (d) A victim who receives notice under (c) of this section may file in the
30 district court a petition for return of the property on a form provided by the court. The
31 petition must be supported by an affidavit setting out the basis for the claim to

1 ownership of the property. The petition must be filed within 30 days after receipt of
2 the notice given under (c) of this section. The victim must submit proof that a copy
3 of the petition and affidavit has been served on the pawnbroker or secondhand dealer
4 and on the law enforcement agency that possesses the property. If a petition is not
5 filed in accordance with this subsection, the property may be returned to the
6 pawnbroker or secondhand dealer.

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

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

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

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

3 (i) A person may not bring a civil action against the court, a law enforcement
4 agency, the state, or a subdivision of the state, or their officers, agents, or employees
5 concerning property disposed of under this section if the court, law enforcement
6 agency, state, subdivision of the state, or their officers, agents, or employees have in
7 good faith substantially complied with the provisions of this section.

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

11 * **Sec. 5.** AS 12.45.120 is amended to read:

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

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

18 (2) **was committed** riotously;

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

20 (4) **was committed** larcenously;

21 (5) **is a crime involving domestic violence** [AGAINST

22 (A) A SPOUSE OR A FORMER SPOUSE OF THE
23 DEFENDANT;

24 (B) A PARENT, GRANDPARENT, CHILD, OR
25 GRANDCHILD OF THE DEFENDANT;

26 (C) A MEMBER OF THE SOCIAL UNIT COMPRISED OF
27 THOSE LIVING TOGETHER IN THE SAME DWELLING AS THE
28 DEFENDANT; OR

29 (D) A PERSON WHO IS NOT A SPOUSE OR FORMER
30 SPOUSE OF THE DEFENDANT BUT WHO PREVIOUSLY LIVED IN A
31 SPOUSAL RELATIONSHIP WITH THE DEFENDANT].

1 * **Sec. 6.** AS 12.45.120 is amended by adding a new subsection to read:

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

4 * **Sec. 7.** AS 12.55.155(d) is amended by adding a new paragraph to read:

5 (18) in a conviction for an offense, the defendant reduced the effect of
6 the offense on the victim by entering a plea of guilty or no contest within 30 days after
7 being arraigned on the charge.

8 * **Sec. 8.** AS 18.66.140(a) is amended to read:

9 (a) A certified copy of an unexpired protective order issued in another
10 jurisdiction **has the same effect and must be enforced in the same manner as a**
11 **protective order issued by a court of this state and** may be filed with the clerk of
12 court in any judicial district in this state.

13 * **Sec. 9.** AS 18.66.140(b) is repealed.

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

16 **INDIRECT COURT RULE CHANGE.** (a) The provisions of sec. 4 of this Act have
17 the effect of amending Rules 10, 11, 13, 16, and 17, Alaska District Court Rules of Civil
18 Procedure, by providing procedures for small claims actions regarding property seized from
19 a pawnbroker or secondhand dealer.

20 (b) Section 4 of this Act takes effect only if (a) of this section receives the two-thirds
21 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

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

24 **INDIRECT COURT RULE CHANGE.** (a) The provisions of AS 12.36.070(h),
25 enacted by sec. 4 of this Act, have the effect of amending Rule 9, Alaska Rules of
26 Administration, by prohibiting the court from setting an administrative fee for the filing of a
27 petition or response in accordance with AS 12.36.070, enacted by sec. 4 of this Act.

28 (b) AS 12.36.070(h), enacted by sec. 4 of this Act, takes effect only if (a) of this
29 section receives the two-thirds majority vote of each house required by art. IV, sec. 15,
30 Constitution of the State of Alaska.

31 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

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

4 (b) Section 4 of this Act applies to property that remains in the possession of a law
5 enforcement agency and that was seized before, on, or after the effective date of this Act.