

**SENATE BILL NO. 316**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

**BY SENATOR ELTON**

**Introduced: 2/19/02**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to stalking and to violating a protective order or injunction; and**  
2 **amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of**  
3 **Administration."**

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

5 \* **Section 1.** AS 04.11.494 (e) is amended to read:

6 (e) A person is disqualified as described under (b)(9) of this section due to the  
7 person's criminal record if less than

8 (1) two years has elapsed from the person's unconditional discharge  
9 due to a conviction or adjudication as a delinquent for any of the following offenses or  
10 a law or ordinance from another jurisdiction with similar elements:

11 (A) driving while intoxicated under AS 28.35.030 or refusal to  
12 submit to a chemical test under AS 28.35.032; or

13 (B) a crime involving domestic violence, as that term is defined  
14 under AS 18.66.990, or violating a protective order **or injunction** under

1 AS 11.56.740;

2 (2) five years has elapsed from the person's unconditional discharge  
3 due to a conviction or adjudication as a delinquent for any of the following offenses or  
4 a law or ordinance from another jurisdiction with similar elements:

5 (A) a felony violation or a felony attempt to commit a violation  
6 of AS 11.41; or

7 (B) a misdemeanor violation of or a misdemeanor attempt to  
8 violate a provision in this title; or

9 (3) 10 years has elapsed from the person's unconditional discharge due  
10 to a conviction or adjudication as a delinquent for a felony violation or a felony  
11 attempt to violate a provision of this title or a law or ordinance from another  
12 jurisdiction with similar elements.

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

14 (a) A person commits the crime of violating a protective order **or injunction**  
15 if the person

16 **(1)** is subject to a

17 **(A)** protective order

18 **(i) issued or filed under AS 18.66 and** containing a  
19 provision listed in AS 18.66.100(c)(1) - (7); **or**

20 **(ii) issued under AS 18.65.850; or**

21 **(B) protective injunction issued under AS 47.17.069;** and

22 **(2)** knowingly commits or attempts to commit an act **with reckless**  
23 **disregard that the act violates or would violate a** [IN VIOLATION OF THAT]  
24 provision **of the protective order or injunction.**

25 \* **Sec. 3.** AS 12.25.030(b) is amended to read:

26 (b) In addition to the authority granted by (a) of this section, a peace officer

27 (1) shall make an arrest under the circumstances described in  
28 AS 18.65.530;

29 (2) without a warrant, may arrest a person if the officer has probable  
30 cause to believe the person has, either in or outside the presence of the officer,

31 (A) committed a crime involving domestic violence, whether

1 the crime is a felony or a misdemeanor; in this subparagraph, "crime involving  
2 domestic violence" has the meaning given in AS 18.66.990;

3 (B) committed the crime of violating a protective order **or**  
4 **injunction** in violation of AS 11.56.740; or

5 (C) violated a condition of release imposed under  
6 AS 12.30.025 or 12.30.027;

7 (3) without a warrant, may arrest a person when the peace officer has  
8 reasonable cause for believing that the person has

9 (A) committed a crime under or violated conditions imposed as  
10 part of the person's release before trial on misdemeanor charges brought under  
11 AS 11.41.270;

12 (B) violated AS 04.16.050 or an ordinance with similar  
13 elements; however, unless there is a lawful reason for further detention, a  
14 person who is under the age of 18 and who has been arrested for violating  
15 AS 04.16.050 or an ordinance with similar elements shall be cited for the  
16 offense and released to the person's parent, guardian, or legal custodian; or

17 (C) violated conditions imposed as part of the person's release  
18 before trial on felony charges brought under AS 11.41.410 - 11.41.458.

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

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

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

26 (2) committed the crime of violating a protective order **or injunction**  
27 in violation of AS 11.56.740;

28 (3) violated a condition of release imposed under AS 12.30.027.

29 \* **Sec. 5.** AS 18.65 is amended by adding new sections to read:

30 **Article 11. Stalking Protective Orders and Notifications to Stalking Victims.**

31 **Sec. 18.65.850. Protective orders for stalking.** (a) A person who reasonably

1 believes that the crime of stalking, that is not a crime involving domestic violence, is  
2 being committed against the person by another may petition the district or superior  
3 court for an order directing the person who is allegedly committing the stalking to

4 (1) stay away from the home, school, business, or place of employment  
5 of the petitioner and any other location specifically named by the court;

6 (2) refrain from contacting, intimidating, threatening, or otherwise  
7 interfering with the petitioner or a family member of the petitioner specifically named  
8 by the court.

9 (b) After receiving a petition under (a) of this section, a court may grant

10 (1) an emergency protective order if the court finds that

11 (A) the petition establishes probable cause that the respondent  
12 has committed the crime of stalking against the petitioner;

13 (B) the protective order is necessary to protect the petitioner  
14 from further stalking; and

15 (C) the petition does not order the respondent to stay away  
16 from the respondent's own home, school, business, or place of employment;

17 (2) a temporary protective order if the court finds that

18 (A) the petition establishes probable cause that the respondent  
19 has committed the crime of stalking against the petitioner;

20 (B) the protective order is necessary to protect the petitioner  
21 from further stalking;

22 (C) the respondent has been served with or otherwise provided  
23 notice of the petition; and

24 (D) the petition does not order the alleged stalker to stay away  
25 from the alleged stalker's own home, school, business, or place of employment  
26 unless the alleged stalker has been provided an opportunity to be heard on the  
27 petition; or

28 (3) an extended protective order if the court finds, after a hearing, that

29 (A) by a preponderance of evidence, the respondent has  
30 committed the crime of stalking against the petitioner;

31 (B) the protective order is necessary to protect the petitioner

1 from further stalking; and

2 (C) the respondent has been provided at least 10 days' notice of  
3 the hearing and of the alleged stalker's right to appear and be heard, either in  
4 person or by an attorney.

5 (c) A protective order is not effective until served upon the respondent. An  
6 emergency protective order expires 72 hours after the date the order is issued. A  
7 temporary protective order expires 20 days after the date the order is served on the  
8 respondent. An extended protective order expires six months after the order is served  
9 on the respondent.

10 (d) A parent or guardian may file a petition for a protective order under this  
11 section on behalf of a minor. A peace officer may make a written or oral application  
12 for an emergency protective order under this section on behalf of, and with the consent  
13 of, the stalking victim.

14 (e) Either the petitioner or the respondent may request modification of a  
15 protective order. The court may not grant a modification unless notice of the request  
16 has been provided to the adverse party and the adverse party has been granted a  
17 reasonable opportunity to be heard. A modified order issued under this subsection  
18 replaces the protective order it modifies.

19 (f) A protective order issued by a court under this section shall be delivered to  
20 the appropriate law enforcement agency for service on the respondent. Service of  
21 process shall be as provided in AS 18.66.160 for service of process of domestic  
22 violence protective orders.

23 (g) The Alaska Court System shall prepare forms for petitions and protective  
24 orders and instructions for their use by a person seeking a protective order under this  
25 section. Each protective order form must contain the following warning in boldface  
26 type: "Violation of this order may be a misdemeanor, punishable by up to one year of  
27 incarceration and up to a \$5,000 fine." Filing fees may not be charged for the filing of  
28 a petition under this section."

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

31 **Sec. 18.65.855. Notification to stalking victims.** The Department of Public

1 Safety shall develop and make available to law enforcement agencies in the state a  
 2 notice that details the rights of victims of stalking, that is not a crime involving  
 3 domestic violence, and the services available to them. The form must be similar to  
 4 that provided to victims of domestic violence under AS 18.65.520. A peace officer  
 5 investigating a stalking offense shall provide the form to the victim. In this section,  
 6 "crime involving domestic violence" has the meaning given in AS 18.66.990.

7 \* **Sec. 6.** AS 18.66.990(3) is amended to read:

8 (3) "domestic violence" and "crime involving domestic violence" mean  
 9 one or more of the following offenses or an offense under a law or ordinance of  
 10 another jurisdiction having elements similar to these offenses, or an attempt to commit  
 11 the offense, by a household member against another household member:

12 (A) a crime against the person under AS 11.41;

13 (B) burglary under AS 11.46.300 - 11.46.310;

14 (C) criminal trespass under AS 11.46.320 - 11.46.330;

15 (D) arson or criminally negligent burning under AS 11.46.400 -  
 16 11.46.430;

17 (E) criminal mischief under AS 11.46.480 - 11.46.486;

18 (F) terroristic threatening under AS 11.56.810;

19 (G) violating a **protective** [DOMESTIC VIOLENCE] order **or**  
 20 **injunction** under AS 11.56.740; or

21 (H) harassment under AS 11.61.120(a)(2) - (4);

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

24 **INDIRECT COURT RULE AMENDMENTS.** AS 18.65.850(f), added by sec. 5 of  
 25 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,  
 26 Alaska Rules of Administration, relating to service of process for protective orders for victims  
 27 of stalking.