

HOUSE BILL NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES HEINZE AND CRAWFORD, McGuire, Gara

Introduced: 1/21/03

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to stalking and to violating a protective order; and amending Rules 4**
2 **and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."**

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

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

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

7 **(1) issued or filed under AS 18.66 and** containing a provision listed
8 in AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act with
9 reckless disregard that the act violates or would violate a provision of the protective
10 order; **or**

11 **(2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and**
12 **knowingly commits or attempts to commit an act in violation of the order.**

13 * **Sec. 2.** AS 18.65.530(a) is amended to read:

14 (a) Except as provided in (b) or (c) of this section, a peace officer, with or

1 without a warrant, shall arrest a person if the officer has probable cause to believe the
 2 person has, either in or outside the presence of the officer, within the previous 12
 3 hours,

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

6 (2) committed the crime of violating a protective order in violation of
 7 AS 11.56.740(a)(1) [AS 11.56.740];

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

9 * **Sec. 3.** AS 18.65 is amended by adding new sections to read:

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

11 **Sec. 18.65.850. Protective orders for stalking.** (a) A person who reasonably
 12 believes that the person is a victim of stalking that is not a crime involving domestic
 13 violence may file a petition in the district or superior court for a stalking protective
 14 order against a respondent who is alleged to have committed the stalking. A parent or
 15 guardian may file a petition on behalf of a minor.

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

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

25 (1) prohibit the respondent from threatening to commit or committing
 26 stalking;

27 (2) prohibit the respondent from telephoning, contacting, or otherwise
 28 communicating directly or indirectly with the petitioner or a designated household
 29 member of the petitioner specifically named by the court;

30 (3) direct the respondent to stay away from the residence, school, or
 31 place of employment of the petitioner, or any specified place frequented by the

1 petitioner; however, the court may order the respondent to stay away from the
 2 respondent's own residence, school, or place of employment only if the respondent has
 3 been provided actual notice of the opportunity to appear and be heard on the petition.

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

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

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

9 **Sec. 18.65.855. Ex parte and emergency protective orders for stalking.** (a)

10 A person who reasonably believes that the person is a victim of stalking that is not a
 11 crime involving domestic violence may file a petition under AS 18.65.850 and request
 12 an ex parte protective order. If the court finds that the petition establishes probable
 13 cause that the crime of stalking has occurred, that it is necessary to protect the
 14 petitioner from further stalking, and that the petitioner has certified to the court in
 15 writing the efforts, if any, that have been made to provide notice to the respondent, the
 16 court shall ex parte and without notice to the respondent issue a protective order. An
 17 ex parte protective order under this section may grant the protection allowed by
 18 AS 18.65.850(c). An ex parte protective order expires 20 days after it is issued unless
 19 dissolved earlier by the court at the request of either the petitioner or the respondent
 20 after notice and, if requested, a hearing. If the court issues an ex parte protective
 21 order, the court shall have the order delivered to the appropriate law enforcement
 22 agency for expedited service.

23 (b) A peace officer, on behalf of and with the consent of a victim of stalking
 24 that is not a crime involving domestic violence, may request an emergency protective
 25 order from a judicial officer. The request may be made orally or in writing based on
 26 the sworn statement of a peace officer, and in person or by telephone. If the court
 27 finds probable cause to believe that the petitioner is in immediate danger of stalking
 28 based on an allegation of the recent commission of stalking, the court ex parte shall
 29 issue an emergency protective order. An emergency protective order may grant the
 30 protection allowed by AS 18.65.850(c). An emergency protective order expires 72
 31 hours after it is issued unless dissolved earlier by the court at the request of the

1 petitioner. A peace officer who obtains an emergency protective order under this
2 section shall

3 (1) place the provisions of an oral order in writing on a form provided
4 by the court and file the written order with the issuing court by the end of the judicial
5 day after the order is issued;

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

7 (3) serve a copy of the order on the respondent.

8 **Sec. 18.65.860. Modification of protective orders for stalking.** (a) Either
9 the petitioner or the respondent may request modification of a protective order issued
10 under AS 18.65.850 or 18.65.855(a). If a request is made for modification of

11 (1) a protective order, after notice and hearing under AS 18.65.850, the
12 court shall schedule a hearing within 20 days after the date the request is made, except
13 that, if the court finds that the request is meritless on its face, the court may deny the
14 request without a hearing; or

15 (2) an ex parte protective order under AS 18.65.855(a), the court shall
16 schedule a hearing on three days' notice or on shorter notice as the court may
17 prescribe.

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

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

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

24 **Sec. 18.65.865. Service of process; forms for petitions and orders; fees;
25 warnings; and notification.** (a) Service of process of an order issued by the court
26 under AS 18.65.850 - 18.65.860 shall be as provided in AS 18.66.160 for service of
27 process of domestic violence protective orders.

28 (b) The Alaska Court System shall prepare forms for petitions and protective
29 orders and instructions for their use by a person seeking a protective order under
30 AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil
31 Procedure, except that information on the forms may be filled in by legible

1 handwriting. Filing fees may not be charged in any action seeking only the relief
 2 provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the
 3 following warning in boldface type: "Violation of this order may be a misdemeanor,
 4 punishable by up to one year of incarceration and a fine of up to \$5,000."

5 (c) The Department of Public Safety shall develop and make available to law
 6 enforcement agencies in the state a notice that details the rights of victims of stalking
 7 and the services available to them. The form must be similar to that provided to
 8 victims of domestic violence under AS 18.65.520. A peace officer investigating a
 9 stalking offense shall provide the form to the victim.

10 **Sec. 18.65.870. Definitions.** In AS 18.65.850 - 18.65.870,

11 (1) "crime involving domestic violence" has the meaning given in
 12 AS 18.66.990;

13 (2) "household member" has the meaning given in AS 18.66.990;

14 (3) "stalking" means a violation of AS 11.41.260 or 11.41.270.

15 * **Sec. 4.** AS 18.66.990(3) is amended to read:

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

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

21 (B) burglary under AS 11.46.300 - 11.46.310;

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

23 (D) arson or criminally negligent burning under AS 11.46.400 -
 24 11.46.430;

25 (E) criminal mischief under AS 11.46.475 - 11.46.486;

26 (F) terrorist threatening under AS 11.56.807 or 11.56.810;

27 (G) violating a **protective** [DOMESTIC VIOLENCE] order
 28 under **AS 11.56.740(a)(1)** [AS 11.56.740]; or

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

30 * **Sec. 5.** AS 22.15.100(9) is amended to read:

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

1 (A) domestic violence as provided in AS 18.66.100 -
2 18.66.180; or

3 (B) stalking as provided in AS 18.65.850 - 18.65.870;

4 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 INDIRECT COURT RULE AMENDMENTS. (a) AS 18.65.865, added by sec. 3 of
7 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,
8 Alaska Rules of Administration, relating to fees and service of process for protective orders
9 for victims of stalking.

10 (b) AS 18.65.850 - 18.65.870, added by sec. 3 of this Act, have the effect of
11 amending Rule 65, Alaska Rules of Civil Procedure, relating to temporary restraining orders,
12 the method of obtaining those orders, and the timing of those orders.