

SENATE BILL NO. 54

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATORS DYSON, Guess

Introduced: 1/14/05

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to notification to victims of sexual assault; relating to protective**
2 **orders; and relating to arrests for crimes involving sexual assault, violation of protective**
3 **orders, or violation of conditions of release."**

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

5 * **Section 1.** AS 18.65 is amended by adding a new section to read:

6 **Sec. 18.65.525. Notification to victims of sexual assault.** (a) A peace
7 officer investigating a crime involving sexual assault shall orally and in writing inform
8 the victim of the rights of victims of sexual assault and the services available to them.
9 The notice must be in substantially the following form:

10 If you are the victim of sexual assault and you believe that law
11 enforcement protection is needed for your physical safety, you have the
12 right to request that the officer assist in providing for your safety,
13 including asking for an emergency protective order.

14 If you are in need of medical treatment, you may request that

1 the officer assist you in obtaining medical treatment.

2 You may obtain information about whether the prosecuting
3 attorney will file a criminal complaint about the sexual assault.

4 Additionally, the victim/witness assistance program of the
5 Department of Law may be able to help you. This information is
6 available from the district attorney's office, which is located at
7 _____.

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

10 (1) prohibit a perpetrator from threatening to commit or
11 committing further acts of sexual assault;

12 (2) prohibit a perpetrator from stalking, harassing,
13 telephoning, contacting, or otherwise communicating with you, directly
14 or indirectly;

15 (3) remove a perpetrator from your residence;

16 (4) order a perpetrator to stay away from your
17 residence, school, place of employment, or any other specified place
18 frequented by you or another designated household member;

19 (5) prohibit a perpetrator from entering your vehicle or
20 a vehicle you occupy;

21 (6) prohibit a perpetrator from using or possessing a
22 deadly weapon if the court finds a perpetrator was in the actual
23 possession of or used a weapon during the commission of a sexual
24 assault;

25 (7) direct a perpetrator to surrender any firearm owned
26 or possessed by that person if the court finds a perpetrator was in the
27 actual possession of or used a firearm during the commission of a
28 sexual assault;

29 (8) request a peace officer to accompany you to your
30 residence to ensure your safe possession of the residence, vehicle, or
31 other items, or to ensure your safe removal of personal items from the

1 residence;

2 (9) prohibit a perpetrator from consuming controlled
3 substances;

4 (10) require a perpetrator to reimburse you for your
5 expenses caused by the sexual assault, including medical bills, or for
6 your costs in getting a protective order;

7 (11) order a perpetrator to participate in an intervention
8 program for perpetrators; and

9 (12) other relief the court determines to be necessary for
10 your safety.

11 The forms you need to obtain a protective order are available
12 from the nearest court. It is not necessary to have an attorney to obtain
13 a protective order, but you may consult an attorney if you choose. If
14 you would like help obtaining a protective order, you may contact the
15 nearest sexual assault program located at _____. The program
16 can also tell you about other resources available in this community for
17 information about sexual assault, treatment of injuries, and places of
18 safety and shelter.

19 You may also qualify for compensation from the Violent
20 Crimes Compensation Board. The board may be contacted at
21 _____.

22 (b) If the victim of sexual assault does not understand English, the peace
23 officer shall make reasonable efforts to inform the victim of the services and rights
24 specified in (a) of this section in a language the victim understands.

25 * **Sec. 2.** AS 18.65 is amended by adding a new section to read:

26 **Sec. 18.65.535. Mandatory arrest for crimes involving sexual assault,**
27 **violation of protective orders, and violation of conditions of release.** A peace
28 officer, with or without a warrant, shall arrest a person if the officer has probable
29 cause to believe the person has, either in or outside the presence of the officer, within
30 the previous 12 hours,

31 (1) committed sexual assault, whether the crime is a felony or a

1 misdemeanor;

2 (2) committed the crime of violating a protective order in violation of
3 AS 11.56.740(a)(1);

4 (3) violated a condition of release imposed under AS 12.30.029.

5 * **Sec. 3.** AS 18.65.590 is amended to read:

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

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

8 **(2) "sexual assault" has the meaning given in AS 18.66.990.**

9 * **Sec. 4.** AS 18.66.100 is amended to read:

10 **Sec. 18.66.100. Protective orders: eligible petitioners; relief.** (a) A person
11 who is or has been a victim of a crime involving domestic violence may file a petition
12 in the district or superior court for a protective order against a household member. **A**
13 **person who is or has been a victim of a crime involving sexual assault may file a**
14 **petition in the district or superior court for a protective order against a**
15 **perpetrator of the crime.** A parent, guardian, or other representative appointed by
16 the court under this section may file a petition for a protective order on behalf of a
17 minor. The court may appoint a guardian ad litem or attorney to represent the minor.
18 Notwithstanding AS 25.24.310 or this section, the office of public advocacy may not
19 be appointed as a guardian ad litem or attorney for a minor in a petition filed under
20 this section unless the petition has been filed on behalf of the minor.

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

28 (1) (c)(1) of this section are effective until further order of the court;

29 (2) (c)(2) - (16) of this section are effective for one year unless earlier
30 dissolved by court order.

31 (c) A protective order under this section may

1 (1) prohibit the respondent from threatening to commit or committing
2 domestic violence, **sexual assault**, stalking, or harassment;

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

5 (3) remove and exclude the respondent from the residence of the
6 petitioner, regardless of ownership of the residence;

7 (4) direct the respondent to stay away from the residence, school, or
8 place of employment of the petitioner or any specified place frequented by the
9 petitioner or any designated household member;

10 (5) prohibit the respondent from entering a propelled vehicle in the
11 possession of or occupied by the petitioner;

12 (6) prohibit the respondent from using or possessing a deadly weapon
13 if the court finds the respondent was in the actual possession of or used a weapon
14 during the commission of domestic violence **or sexual assault**;

15 (7) direct the respondent to surrender any firearm owned or possessed
16 by the respondent if the court finds that the respondent was in the actual possession of
17 or used a firearm during the commission of the domestic violence **or sexual assault**;

18 (8) request a peace officer to accompany the petitioner to the
19 petitioner's residence to ensure that the petitioner

20 (A) safely obtains possession of the petitioner's residence,
21 vehicle, or personal items; and

22 (B) is able to safely remove a vehicle or personal items from
23 the petitioner's residence;

24 (9) award temporary custody of a minor child to the petitioner and may
25 arrange for visitation with a minor child if the safety of the child and the petitioner can
26 be protected; if visitation is allowed, the court may order visitation under the
27 conditions provided in AS 25.20.061;

28 (10) give the petitioner possession and use of a vehicle and other
29 essential personal items, regardless of ownership of the items;

30 (11) prohibit the respondent from consuming controlled substances;

31 (12) require the respondent to pay support for the petitioner or a minor

1 child in the care of the petitioner if there is an independent legal obligation of the
2 respondent to support the petitioner or child;

3 (13) require the respondent to reimburse the petitioner or other person
4 for expenses associated with the domestic violence **or sexual assault**, including
5 medical expenses, counseling, shelter, and repair or replacement of damaged property;

6 (14) require the respondent to pay costs and fees incurred by the
7 petitioner in bringing the action under this chapter;

8 (15) order the respondent, at the respondent's expense, to participate in
9 (A) a program for the rehabilitation of perpetrators of domestic violence that meets the
10 standards set by, and that is approved by, the Department of Corrections under
11 AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances, or
12 both; a protective order under this section may not require a respondent to participate
13 in a program for the rehabilitation of perpetrators of domestic violence unless the
14 program meets the standards set by, and that is approved by, the Department of
15 Corrections under AS 44.28.020(b);

16 (16) order other relief the court determines necessary to protect the
17 petitioner or any household member.

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

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

21 (2) have the order delivered to the appropriate local law enforcement
22 agency for expedited service and, **in cases involving domestic violence**, for entry into
23 the central registry of protective orders under AS 18.65.540.

24 (e) A court may not deny a petition for a protective order under this section
25 solely because of a lapse of time between an act of domestic violence **or sexual**
26 **assault** and the filing of the petition.

27 * **Sec. 5.** AS 18.66.110(a) is amended to read:

28 (a) A person who is a victim of a crime involving domestic violence **or sexual**
29 **assault** may file a petition under AS 18.66.100(a) and request an ex parte protective
30 order. If the court finds that the petition establishes probable cause that a crime
31 involving domestic violence **or sexual assault** has occurred **and that** [,] it is

1 necessary to protect the petitioner from domestic violence **or sexual assault**, and if the
2 petitioner has certified to the court in writing the efforts, if any, that have been made
3 to provide notice to the respondent, the court shall ex parte and without notice to the
4 respondent issue a protective order. An ex parte protective order may grant the
5 protection provided by AS 18.66.100(c)(1) - (5), (8) - (12), and (16). An ex parte
6 protective order expires 20 days after it is issued unless dissolved earlier by the court
7 at the request of either the petitioner or the respondent and after notice and, if
8 requested, a hearing. If a court issues an ex parte protective order, the court shall have
9 the order delivered to the appropriate local law enforcement agency for expedited
10 service and, **in cases involving domestic violence**, for entry into the central registry of
11 protective orders under AS 18.65.540.

12 * **Sec. 6.** AS 18.66.150(b) is amended to read:

13 (b) In addition to other information required, a petition for a protective order
14 must include a statement of pending civil actions or domestic violence **or sexual**
15 **assault** criminal actions involving either the petitioner or the respondent. While a
16 protective order is in effect or a petition for protective order is pending, both the
17 petitioner and respondent have a continuing duty to inform the court of pending civil
18 actions or domestic violence **or sexual assault** criminal actions involving either the
19 petitioner or the respondent.