

CS FOR SENATE BILL NO. 54(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/16/05

Referred: Judiciary, Finance

Sponsor(s): SENATORS DYSON, Guess

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to protective orders for crimes involving sexual assault and stalking, to**
2 **notifications to victims of sexual assault, and to mandatory arrest for crimes involving**
3 **violation of protective orders and violation of conditions of release; and amending Rule**
4 **65, Alaska Rules of Civil Procedure."**

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

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

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

9 (1) issued or filed under AS 18.66 and containing a provision listed in
10 AS 18.66.100(c)(1) - (7) **or 18.66.105(c)(1) - (3)** and knowingly commits or attempts
11 to commit an act with reckless disregard that the act violates or would violate a
12 provision of the protective order; or

13 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly
14 commits or attempts to commit an act **that violates or would violate a provision**

1 **listed in AS 18.65.850(c)(1) - (3)** [IN VIOLATION OF THE ORDER].

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

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

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

9 (2) committed the crime of violating a protective order in violation of
10 **AS 11.56.740** [AS 11.56.740(a)(1)];

11 (3) violated a condition of release imposed under **AS 12.30.025,**
12 **12.30.027, or 12.30.029** [AS 12.30.027].

13 * **Sec. 3.** AS 18.65.850(c) is amended to read:

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

15 (1) prohibit the respondent from threatening to commit or committing
16 stalking;

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

20 (3) direct the respondent to stay away from the residence, school, or
21 place of employment of the petitioner, or any specified place frequented by the
22 petitioner; however, the court may order the respondent to stay away from the
23 respondent's own residence, school, or place of employment only if the respondent has
24 been provided actual notice of the opportunity to appear and be heard on the petition;

25 **(4) order other relief the court determines to be necessary to**
26 **protect the petitioner or the designated household member.**

27 * **Sec. 4.** AS 18.66 is amended by adding a new section to read:

28 **Sec. 18.66.105. Protective orders for sexual assault.** (a) A person who is or
29 has been a victim of a crime involving sexual assault that is not a crime involving
30 domestic violence may file a petition in the district or superior court for a sexual
31 assault protective order against a respondent who is alleged to have committed the

1 sexual assault. A parent or guardian may file a petition on behalf of a minor.

2 (b) When a petition for a protective order is filed, the court shall schedule a
3 hearing and provide at least 10 days' notice to the respondent of the hearing and of the
4 respondent's right to appear and be heard, either in person or through an attorney. If
5 the court finds by a preponderance of evidence that the respondent has committed
6 sexual assault against the petitioner, regardless of whether the respondent appears at
7 the hearing, the court may order any relief available under (c) of this section. The
8 provisions of a protective order issued under this section are effective for six months
9 unless earlier dissolved by the court.

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

11 (1) prohibit the respondent from threatening to commit or committing
12 a crime against the petitioner or a designated household member of the petitioner who
13 is specifically named in the order;

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

17 (3) direct the respondent to stay away from the residence, school, or
18 place of employment of the petitioner, or any specified place frequented by the
19 petitioner; however, the court may order the respondent to stay away from the
20 respondent's own residence, school, or place of employment only if the respondent has
21 been provided actual notice of the opportunity to appear and be heard on the petition;

22 (4) require the respondent to reimburse the petitioner or other person
23 for expenses incurred as a result of the sexual assault, including medical and
24 counseling expenses;

25 (5) order other relief the court determines to be necessary to protect the
26 petitioner or the designated household member.

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

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

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

1 (e) A court may not deny a petition for a protective order solely because of a
2 lapse of time between an act of sexual assault and the filing of the petition.

3 * **Sec. 5.** AS 18.66 is amended by adding a new section to read:

4 **Sec. 18.66.115. Ex parte and emergency protective orders for sexual**
5 **assault.** (a) A person who is or has been a victim of a crime involving sexual assault
6 that is not a crime involving domestic violence may file a petition under AS 18.66.105
7 and request an ex parte protective order. If the court finds that the petition establishes
8 probable cause that the crime of sexual assault has occurred, that it is necessary to
9 protect the petitioner from further sexual assault, and that the petitioner has certified to
10 the court in writing the efforts, if any, that have been made to provide notice to the
11 respondent, the court shall ex parte and without notice to the respondent issue a
12 protective order. A court may not deny a petition for an ex parte protective order filed
13 under this section solely because of a lapse of the time between an act of sexual
14 assault and the filing of the petition. An ex parte protective order under this section
15 may grant the protection allowed by AS 18.66.105(c). An ex parte protective order
16 expires 20 days after it is issued unless dissolved earlier by the court at the request of
17 either the petitioner or the respondent after notice and, if requested, a hearing. If the
18 court issues an ex parte protective order, the court shall have the order delivered to the
19 appropriate law enforcement agency for expedited service.

20 (b) A peace officer, on behalf of and with the consent of a victim of sexual
21 assault that is not a crime involving domestic violence, may request an emergency
22 protective order from a judicial officer. The request may be made orally or in writing
23 based on the sworn statement of a peace officer, and in person or by telephone. If the
24 court finds probable cause to believe that the petitioner is in immediate danger of
25 sexual assault based on an allegation of the recent commission of sexual assault, the
26 court ex parte shall issue an emergency protective order. An emergency protective
27 order may grant the protection allowed by AS 18.66.105(c). An emergency protective
28 order expires 72 hours after it is issued unless dissolved earlier by the court at the
29 request of the petitioner. A peace officer who obtains an emergency protective order
30 under this section shall

31 (1) place the provisions of an oral order in writing on a form provided

1 by the court and file the written order with the issuing court by the end of the judicial
2 day after the order is issued;

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

4 (3) serve a copy of the order on the respondent; and

5 (4) enter the protective order in the central registry of protective orders
6 as required under AS 18.65.540.

7 * **Sec. 6.** AS 18.66.120 is amended to read:

8 **Sec. 18.66.120. Modification of protective orders.** (a) Either the petitioner
9 or the respondent may request modification of a protective order. If a request is made
10 for modification of

11 (1) an ex parte protective order under AS 18.66.110(a) **or**
12 **18.66.115(a)**, the court shall schedule a hearing on three days' notice or on shorter
13 notice as the court may prescribe; the court shall hear and rule on the request in an
14 expeditious manner; or

15 (2) a protective order after notice and hearing under AS 18.66.100(b)
16 **or 18.66.105(b)**, the court shall schedule a hearing within 20 days after the date the
17 request is made, except that if the court finds that the request is meritless on its face,
18 the court may deny the request without further hearing.

19 * **Sec. 7.** AS 18.66.150(b) is amended to read:

20 (b) In addition to other information required, a petition for a protective order
21 must include a statement of pending civil [ACTIONS] or [DOMESTIC VIOLENCE]
22 criminal actions involving either the petitioner or the respondent. While a protective
23 order is in effect or a petition for protective order is pending, both the petitioner and
24 respondent have a continuing duty to inform the court of pending civil [ACTIONS] or
25 [DOMESTIC VIOLENCE] criminal actions involving either the petitioner or the
26 respondent.

27 * **Sec. 8.** AS 18.66.160 is amended by adding a new subsection to read:

28 (d) The Department of Public Safety shall develop and make available to law
29 enforcement agencies in the state a notice that details the rights of victims of sexual
30 assault and the services available to them. The form must be similar to that provided
31 to victims of domestic violence under AS 18.65.520. A peace officer investigating a

1 sexual assault offense shall provide the form to the victim.

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

4 **INDIRECT COURT RULE AMENDMENT.** The provisions of secs. 4 and 5 of this
5 Act have the effect of changing Rule 65, Alaska Rules of Civil Procedure, by changing the
6 method for obtaining, and the timing of, temporary restraining orders.