

**CS FOR SENATE BILL NO. 54(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/1/05

Referred: Finance

Sponsor(s): SENATORS DYSON, Guess, French, Ellis

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to protective orders for crimes involving sexual assault or 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) and knowingly commits or attempts to commit an act with  
11 reckless disregard that the act violates or would violate a provision of the protective  
12 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(a) is amended to read:

14 (a) A person who reasonably believes that the person is a victim of stalking **or**  
15 **sexual assault** that is not a crime involving domestic violence may file a petition in  
16 the district or superior court for a [STALKING] protective order against a respondent  
17 who is alleged to have committed the stalking **or sexual assault**. A parent or guardian  
18 may file a petition on behalf of a minor.

19 \* **Sec. 4.** AS 18.65.850(b) is amended to read:

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

28 \* **Sec. 5.** AS 18.65.850(c) is amended to read:

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

30 (1) prohibit the respondent from threatening to commit or committing  
31 stalking **or sexual assault**;

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

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

9 **(4) for a protective order for sexual assault, require the respondent**  
10 **to reimburse the petitioner or other person for expenses incurred as a result of**  
11 **the sexual assault, including medical and counseling expenses;**

12 **(5) order other relief the court determines to be necessary to**  
13 **protect the petitioner or the designated household member.**

14 \* **Sec. 6.** AS 18.65.850 is amended by adding a new subsection to read:

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

17 \* **Sec. 7.** AS 18.65.855 is amended to read:

18 **Sec. 18.65.855. Ex parte and emergency protective orders for stalking and**  
19 **sexual assault.** (a) A person who reasonably believes that the person is a victim of  
20 stalking **or sexual assault** that is not a crime involving domestic violence may file a  
21 petition under AS 18.65.850 and request an ex parte protective order. If the court  
22 finds that the petition establishes probable cause that the crime of stalking **or sexual**  
23 **assault** has occurred, that it is necessary to protect the petitioner from further stalking  
24 **or sexual assault**, and that the petitioner has certified to the court in writing the  
25 efforts, if any, that have been made to provide notice to the respondent, the court shall  
26 ex parte and without notice to the respondent issue a protective order. An ex parte  
27 protective order under this section may grant the protection allowed by  
28 AS 18.65.850(c). An ex parte protective order expires 20 days after it is issued unless  
29 dissolved earlier by the court at the request of either the petitioner or the respondent  
30 after notice and, if requested, a hearing. If the court issues an ex parte protective  
31 order, the court shall have the order delivered to the appropriate law enforcement

1 agency for expedited service.

2 (b) A peace officer, on behalf of and with the consent of a victim of stalking  
 3 **or sexual assault** that is not a crime involving domestic violence, may request an  
 4 emergency protective order from a judicial officer. The request may be made orally or  
 5 in writing based on the sworn statement of a peace officer, and in person or by  
 6 telephone. If the court finds probable cause to believe that the petitioner is in  
 7 immediate danger of stalking **or sexual assault** based on an allegation of the recent  
 8 commission of stalking **or sexual assault**, the court ex parte shall issue an emergency  
 9 protective order. An emergency protective order may grant the protection allowed by  
 10 AS 18.65.850(c). An emergency protective order expires 72 hours after it is issued  
 11 unless dissolved earlier by the court at the request of the petitioner. A peace officer  
 12 who obtains an emergency protective order under this section shall

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

16 (2) provide a copy of the order to the petitioner; [AND]

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

18 **(4) enter the protective order in the central registry of protective**  
 19 **orders as required under AS 18.65.540.**

20 \* **Sec. 8.** AS 18.65.865(c) is amended to read:

21 (c) The Department of Public Safety shall develop and make available to law  
 22 enforcement agencies in the state a notice that details the rights of victims of stalking  
 23 **and sexual assault** and the services available to them. The form must be similar to  
 24 that provided to victims of domestic violence under AS 18.65.520. A peace officer  
 25 investigating a stalking **or sexual assault** offense shall provide the form to the victim.

26 \* **Sec. 9.** AS 18.65.865 is amended by adding a new subsection to read:

27 (d) In addition to other information required, a petition for a protective order  
 28 must include a statement of pending civil and criminal actions involving either the  
 29 petitioner or the respondent, if known. While a protective order is in effect or a  
 30 petition for a protective order is pending, both the petitioner and respondent have a  
 31 continuing duty to inform the court of pending civil and criminal actions involving

1 either the petitioner or the respondent, if known.

2 \* **Sec. 10.** AS 18.65.870 is amended by adding a new paragraph to read:

3 (4) "sexual assault" has the meaning given in AS 18.66.990.

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

6 **INDIRECT COURT RULE AMENDMENT.** The provisions of secs. 3 - 7 of this Act  
7 have the effect of changing Rule 65, Alaska Rules of Civil Procedure, by changing the  
8 method for obtaining, and the timing of, temporary restraining orders.

9 \* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 **REVISOR'S INSTRUCTION.** The revisor of statutes is instructed to change the title  
12 of Article 11 of AS 18.65 from "Stalking Protective Orders and Notifications to Stalking  
13 Victims" to "Stalking and Sexual Assault Protective Orders and Notifications to Stalking and  
14 Sexual Assault Victims," to change the catch line of AS 18.65.850 from "Protective orders for  
15 stalking" to "Protective order for stalking and sexual assault," and to change the catch line of  
16 AS 18.65.860 from "Modification of protective orders for stalking" to "Modification of  
17 protective orders for stalking and sexual assault."