

(LIMITED RUN FOR ALL ADDITIONAL SPONSORSHIPS)

CS FOR SENATE BILL NO. 54(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 1/25/06

Referred: Rules

Sponsor(s): SENATORS DYSON, Guess, French, Ellis, Bunde, Huggins, Seekins, Kookesh, Elton, Davis, Stedman, Green, Cowdery, Ben Stevens, Gary Stevens, Olson, Wagoner

REPRESENTATIVES Gara, McGuire, Meyer, Stoltze, Foster, Neuman, Kerttula, Dahlstrom, Lynn, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act amending protective order statutes for crimes involving stalking to include
2 crimes involving sexual assault and sexual abuse, to provide for other relief ordered by a
3 court, to add the protective orders to a centralized registry, to prevent denial solely for a
4 lapse of time, and to require notification of the court of known civil or criminal actions
5 involving the petitioner or respondent; relating to notifications to victims of sexual
6 assault and to mandatory arrest for crimes involving violation of protective orders and
7 violation of conditions of release; and amending Rule 65, Alaska Rules of Civil
8 Procedure."

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

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

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

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

5 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly
 6 commits or attempts to commit an act **that violates or would violate a provision**
 7 **listed in AS 18.65.850(c)(1) - (3)** [IN VIOLATION OF THE ORDER].

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

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

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

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

17 (3) violated a condition of release imposed under **AS 12.30.025,**
 18 **12.30.027, or 12.30.029** [AS 12.30.027].

19 * **Sec. 3.** AS 18.65.540(b) is amended to read:

20 (b) A peace officer receiving a protective order from a court under
 21 **AS 18.65.850 - 18.65.855,** AS 18.66.100 - 18.66.180, a modified order issued under
 22 **AS 18.65.860 or** AS 18.66.120, or an order dismissing a protective order, must take
 23 reasonable steps to ensure that the order, modified order, or dismissal is entered into
 24 the central registry within 24 hours after being received.

25 * **Sec. 4.** AS 18.65.850(a) is amended to read:

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

31 * **Sec. 5.** AS 18.65.850(b) is amended to read:

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

9 * **Sec. 6.** AS 18.65.850(c) is amended to read:

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

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

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

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

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

23 * **Sec. 7.** AS 18.65.850 is amended by adding a new subsection to read:

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

26 * **Sec. 8.** AS 18.65.855 is amended to read:

27 **Sec. 18.65.855. Ex parte and emergency protective orders for stalking and**
 28 **sexual assault.** (a) A person who reasonably believes that the person is a victim of
 29 stalking **or sexual assault** that is not a crime involving domestic violence may file a
 30 petition under AS 18.65.850 and request an ex parte protective order. If the court finds
 31 that the petition establishes probable cause that the crime of stalking **or sexual assault**

1 has occurred, that it is necessary to protect the petitioner from further stalking **or**
 2 **sexual assault**, and that the petitioner has certified to the court in writing the efforts, if
 3 any, that have been made to provide notice to the respondent, the court shall ex parte
 4 and without notice to the respondent issue a protective order. An ex parte protective
 5 order under this section may grant the protection allowed by AS 18.65.850(c). An ex
 6 parte protective order expires 20 days after it is issued unless dissolved earlier by the
 7 court at the request of either the petitioner or the respondent after notice and, if
 8 requested, a hearing. If the court issues an ex parte protective order, the court shall
 9 have the order delivered to the appropriate law enforcement agency for expedited
 10 service.

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

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

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

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

27 * **Sec. 9.** AS 18.65.865(c) is amended to read:

28 (c) 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 stalking
 30 **and sexual assault** and the services available to them. The form must be similar to
 31 that provided to victims of domestic violence under AS 18.65.520. A peace officer

1 investigating a stalking or sexual assault offense shall provide the form to the victim.

2 * **Sec. 10.** AS 18.65.865 is amended by adding a new subsection to read:

3 (d) In addition to other information required, a petition for a protective order
4 must include a statement of pending civil and criminal actions involving either the
5 petitioner or the respondent, if known. While a protective order is in effect or a
6 petition for a protective order is pending, both the petitioner and respondent have a
7 continuing duty to inform the court of pending civil and criminal actions involving
8 either the petitioner or the respondent, if known.

9 * **Sec. 11.** AS 18.65.870 is amended by adding a new paragraph to read:

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

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

13 **INDIRECT COURT RULE AMENDMENT.** The provisions of secs. 4 - 8 of this Act
14 have the effect of changing Rule 65, Alaska Rules of Civil Procedure, by changing the
15 method for obtaining, and the timing of, temporary restraining orders.

16 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **REVISOR'S INSTRUCTION.** The revisor of statutes is instructed to change the title
19 of Article 11 of AS 18.65 from "Stalking Protective Orders and Notifications to Stalking
20 Victims" to "Stalking and Sexual Assault Protective Orders and Notifications to Stalking and
21 Sexual Assault Victims," to change the catch line of AS 18.65.850 from "Protective orders for
22 stalking" to "Protective order for stalking and sexual assault," and to change the catch line of
23 AS 18.65.860 from "Modification of protective orders for stalking" to "Modification of
24 protective orders for stalking and sexual assault."