

HOUSE BILL NO. 62

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES TARR, Josephson, Drummond, Fields

Introduced: 2/20/19

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to gun violence protective orders; relating to the crime of violating a**
2 **protective order; relating to a central registry for protective orders; requiring**
3 **physicians, psychologists, psychological associates, social workers, marital and family**
4 **therapists, and licensed professional counselors to report annually threats of gun**
5 **violence; relating to the powers of district judges and magistrates; amending Rules 4**
6 **and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration;**
7 **and providing for an effective date."**

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

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

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

12 (1) issued, filed, or recognized under AS 18.66 and containing a
13 provision listed in AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to

1 commit an act with reckless disregard that the act violates or would violate a provision
2 of the protective order;

3 (2) issued or recognized under AS 18.65.850, 18.65.855, 18.65.860, or
4 18.65.867 and knowingly commits or attempts to commit an act that violates or would
5 violate a provision listed in AS 18.65.850(c)(1) - (3); or

6 (3) issued under AS 13.26.450 - 13.26.460 and knowingly commits or
7 attempts to commit an act with reckless disregard that the act violates or would violate
8 a provision of the protective order; or

9 **(4) issued under AS 18.65.815 - 18.65.825 and knowingly commits**
10 **or attempts to commit an act that violates or would violate a provision listed in**
11 **AS 18.65.815(c).**

12 * **Sec. 2.** AS 11.56.740(c) is amended to read:

13 (c) In this section, "protective order" means an order issued, filed, or
14 recognized under AS 13.26.450 - 13.26.460, **AS 18.65.815 - 18.65.825, 18.65.850 -**
15 **18.65.870** [AS 18.65.850 - 18.65.870], or AS 18.66.100 - 18.66.180.

16 * **Sec. 3.** AS 18.65.530(a) is amended to read:

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

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

23 (2) committed the crime of violating a protective order in violation of
24 AS 11.56.740(a)(1), [OR] (2), or (4);

25 (3) violated a condition of release imposed under AS 12.30.016(e) or
26 (f) or 12.30.027.

27 * **Sec. 4.** AS 18.65.540(a) is amended to read:

28 (a) The Department of Public Safety shall maintain a central registry of
29 protective orders issued by or filed with a court of this state under AS 13.26.450 -
30 13.26.460, **AS 18.65.815 - 18.65.825, 18.65.850 - 18.65.870** [AS 18.65.850 -
31 18.65.870], or AS 18.66.100 - 18.66.180. The registry must include, for each

1 protective order, the names of the petitioner and respondent, their dates of birth, and
 2 the conditions and duration of the order. The registry shall retain a record of the
 3 protective order after it has expired.

4 * **Sec. 5.** AS 18.65.540(b) is amended to read:

5 (b) A peace officer receiving a protective order from a court under
 6 AS 13.26.450, 13.26.455, AS 18.65.815, 18.65.820, 18.65.850, 18.65.855
 7 [AS 18.65.850 - 18.65.855], or AS 18.66.100 - 18.66.180, a modified order issued
 8 under AS 13.26.460, AS 18.65.825, 18.65.860 [AS 18.65.860], or AS 18.66.120, or an
 9 order dismissing a protective order shall take reasonable steps to ensure that the order,
 10 modified order, or dismissal is entered into the central registry within 24 hours after
 11 being received.

12 * **Sec. 6.** AS 18.65 is amended by adding new sections to article 11 to read:

13 **Sec. 18.65.815. Gun violence protective orders.** (a) A peace officer who
 14 reasonably believes that a person is a danger to self or others by possessing, owning,
 15 purchasing, or receiving a firearm may file a petition in the district or superior court
 16 for a protective order against the person. The petition must include a description of the
 17 number, types, and locations of any firearms or ammunition the peace officer believes
 18 are owned or possessed by the respondent and the basis for the petition.

19 (b) When a peace officer files a petition for a protective order, the court shall
 20 schedule a hearing and provide at least 10 days' notice to the respondent of the hearing
 21 and of the respondent's right to appear and be heard, either in person or through an
 22 attorney. If the court finds by clear and convincing evidence that the respondent is a
 23 danger to self or others by possessing, owning, purchasing, or receiving a firearm,
 24 regardless of whether the respondent appears at the hearing, the court may order the
 25 relief available under (c) of this section. The provisions of a protective order issued
 26 under this section are effective for six months unless earlier dissolved by the court.

27 (c) A protective order issued under this section shall prohibit the respondent
 28 from possessing, owning, purchasing, receiving, or attempting to purchase or receive a
 29 firearm or ammunition.

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

31 (1) make reasonable efforts to ensure that the order is understood by

1 the petitioner and by the respondent, if present;

2 (2) have the order delivered to the appropriate local law enforcement
3 agency for expedited service;

4 (3) direct the respondent to surrender to the appropriate law
5 enforcement agency or sell to a firearms dealer all firearms and ammunition that the
6 respondent possesses or owns within 24 hours after receiving the order.

7 **Sec. 18.65.820. Ex parte and emergency gun violence protective orders. (a)**

8 A peace officer who reasonably believes that a person is a danger to self or others may
9 file a petition under AS 18.65.815 and request an ex parte gun violence protective
10 order. If the court finds that the petition establishes by a preponderance of the
11 evidence that the respondent poses a significant danger of injury to self or others by
12 possessing, owning, purchasing, or receiving a firearm, that less restrictive alternatives
13 have been tried and were ineffective, and that the peace officer has certified to the
14 court in writing the efforts, if any, that have been made to provide notice to the
15 respondent, the court shall ex parte and without notice to the respondent issue a
16 protective order. Before issuing the protective order, the court shall examine on oath
17 the petitioner and any witnesses the petitioner produces. The court may require the
18 petitioner and any witnesses to submit a written affidavit signed under oath instead of
19 examining the petitioner and witnesses. An ex parte protective order issued under this
20 subsection shall prohibit the respondent from possessing, owning, purchasing, or
21 receiving a firearm or ammunition. An ex parte protective order expires 20 days after
22 the order is issued unless dissolved earlier by the court at the request of either the
23 petitioner or the respondent after notice and, if requested, a hearing. If the court issues
24 an ex parte protective order, the court shall have the order delivered to the appropriate
25 law enforcement agency for expedited service.

26 (b) A peace officer may request an emergency gun violence protective order
27 from a judicial officer. A peace officer may make the request orally, either in person
28 or by telephone, or by submitting a sworn written statement. If the court finds by a
29 preponderance of the evidence that the respondent poses an immediate danger of
30 injury to self or others by possessing, owning, purchasing, or receiving a firearm and
31 that less restrictive alternatives have been tried and were ineffective, the court ex parte

1 shall issue an emergency protective order. An emergency protective order shall
 2 prohibit the respondent from possessing, owning, purchasing, or receiving a firearm or
 3 ammunition. An emergency protective order expires 72 hours after it is issued unless
 4 dissolved earlier by the court at the request of the petitioner. A peace officer who
 5 obtains an emergency protective order under this subsection shall

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

9 (2) immediately serve a copy of the order on the respondent.

10 **Sec. 18.65.825. Modification of gun violence protective order.** (a) A peace
 11 officer or the respondent may request modification of a gun violence protective order
 12 issued under AS 18.65.815 or 18.65.820(a). If a request is made for modification of

13 (1) a protective order, after notice and hearing under AS 18.65.815, the
 14 court shall schedule a hearing within 20 days after the date the request is made, except
 15 that, if the court finds that the request is meritless on its face, the court may deny the
 16 request without a hearing; or

17 (2) an ex parte protective order under AS 18.65.820(a), the court shall
 18 schedule a hearing on three days' notice or on shorter notice as the court may
 19 prescribe.

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

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

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

26 **Sec. 18.65.830. Surrender of firearms and ammunition.** (a) When a court
 27 issues a gun violence protective order under AS 18.65.815 - 18.65.825, the court shall
 28 order the respondent to surrender to the appropriate local law enforcement agency or
 29 to sell to a firearms dealer all firearms and ammunition that the respondent possesses,
 30 owns, or has within the respondent's custody or control within 24 hours after receiving
 31 the protective order.

1 (b) Within 48 hours after receiving notice of the protective order, the
2 respondent shall file with the

3 (1) court an original receipt showing that all firearms and ammunition
4 have been surrendered to the local law enforcement agency or sold to a firearms
5 dealer; and

6 (2) local law enforcement agency that served the protective order a
7 copy of the receipt under (1) of this subsection.

8 (c) A law enforcement agency shall retain any firearms or ammunition
9 surrendered to the law enforcement agency under this section until the expiration of
10 the gun violence protective order. When the protective order expires, the law
11 enforcement agency shall return the firearms or ammunition to the respondent.

12 (d) A respondent who has surrendered firearms or ammunition to a law
13 enforcement agency and does not want the firearms or ammunition returned may sell
14 or transfer title of the firearms or ammunition to a firearms dealer.

15 (e) A person other than the respondent who claims title to any firearms or
16 ammunition surrendered under a protective order issued under AS 18.65.815 -
17 18.65.825 may petition the court to have the firearms or ammunition returned to the
18 person.

19 **Sec. 18.65.835. Service of process; forms for petitions and orders; fees;**
20 **warnings; notification; and pending civil or criminal actions.** (a) Service of
21 process of an order issued by the court under AS 18.65.815 - 18.65.825 shall be as
22 provided in AS 18.66.160 for service of process of domestic violence protective
23 orders.

24 (b) The Alaska Court System shall prepare forms for petitions and protective
25 orders and instructions for their use by a peace officer seeking a protective order under
26 AS 18.65.815 - 18.65.825. The forms must conform to the Alaska Rules of Civil
27 Procedure, except that information on the forms may be filled in by legible
28 handwriting. Filing fees may not be charged in an action seeking only the relief
29 provided in AS 18.65.815 - 18.65.845. Each protective order form must contain the
30 following statements in boldface type:

31 (1) "Violation of this order may be a misdemeanor, punishable by up

1 to one year of incarceration and a fine of up to \$10,000"; and

2 (2) "To the restrained person: this order will last until the date and time
3 noted above. You are required to surrender all firearms and ammunition that you own
4 or possess in accordance with AS 18.65.830, and you may not have in your custody or
5 control, own, purchase, possess, receive, or attempt to purchase or receive, a firearm
6 or ammunition while this order is in effect. You may seek the advice of an attorney as
7 to any matter connected with the order. The attorney should be consulted promptly so
8 that the attorney may assist you in any matter connected with the order."

9 (c) In addition to other information required, a petition for a protective order
10 must include a statement of pending civil and criminal actions involving the
11 respondent, if known. While a protective order is in effect or a petition for a protective
12 order is pending, both the petitioner and respondent have a continuing duty to inform
13 the court of pending civil and criminal actions involving the respondent, if known.

14 **Sec. 18.65.840. Notification of law enforcement agencies.** When a court
15 issues or accepts for filing a protective order under AS 18.65.815 - 18.65.825, the
16 court shall send a copy of the order to the appropriate local law enforcement agency.
17 Each law enforcement agency shall establish procedures to inform peace officers of
18 protective orders. Peace officers shall use every reasonable means to enforce a
19 protective order issued or filed under AS 18.65.815 - 18.65.825.

20 **Sec. 18.65.845. Health care providers; duty to report serious threats of**
21 **gun violence.** Annually, a health care provider shall report to the Department of
22 Health and Social Services any serious threat conveyed to the health care provider
23 during the year of gun violence against a reasonably identifiable victim. The health
24 care provider may not include any personally identifiable information in the report and
25 shall make the report on or before December 31 of each year. The Department of
26 Health and Social Services shall summarize the reports received under this section in
27 an annual report and submit the report on or before January 31 to the senate secretary
28 and the chief clerk of the house of representatives and notify the legislature that the
29 report is available. The Department of Health and Social Services may not include any
30 personally identifiable information in the report. In this section, "health care provider"
31 means a physician, psychologist, psychological associate, social worker, marital and

1 family therapist, or licensed professional counselor.

2 * **Sec. 7.** AS 18.65.835(b), enacted by sec. 6 of this Act, is amended to read:

3 (b) The Alaska Court System shall prepare forms for petitions and protective
4 orders and instructions for their use by a peace officer seeking a protective order under
5 AS 18.65.815 - 18.65.825. The forms must conform to the Alaska Rules of Civil
6 Procedure, except that information on the forms may be filled in by legible
7 handwriting. Filing fees may not be charged in an action seeking only the relief
8 provided in **AS 18.65.815 - 18.65.830** [AS 18.65.815 - 18.65.845]. Each protective
9 order form must contain the following statements in boldface type:

10 (1) "Violation of this order may be a misdemeanor, punishable by up
11 to one year of incarceration and a fine of up to \$10,000"; and

12 (2) "To the restrained person: this order will last until the date and time
13 noted above. You are required to surrender all firearms and ammunition that you own
14 or possess in accordance with AS 18.65.830, and you may not have in your custody or
15 control, own, purchase, possess, receive, or attempt to purchase or receive, a firearm
16 or ammunition while this order is in effect. You may seek the advice of an attorney as
17 to any matter connected with the order. The attorney should be consulted promptly so
18 that the attorney may assist you in any matter connected with the order."

19 * **Sec. 8.** AS 22.15.100 is amended to read:

20 **Sec. 22.15.100. Functions and powers of district judge and magistrate.**

21 Each district judge and magistrate has the power

22 (1) to issue writs of habeas corpus for the purpose of inquiring into the
23 cause of restraint of liberty, returnable before a judge of the superior court, and the
24 same proceedings shall be had on the writ as if it had been granted by the superior
25 court judge under the laws of the state in those cases;

26 (2) of a notary public;

27 (3) to solemnize marriages;

28 (4) to issue warrants of arrest, summons, and search warrants
29 according to manner and procedure prescribed by law and the supreme court;

30 (5) to act as an examining judge or magistrate in preliminary
31 examinations in criminal proceedings; to set, receive, and forfeit bail and to order the

1 release of defendants under bail;

2 (6) to act as a referee in matters and actions referred to the judge or
3 magistrate by the superior court, with all powers conferred **on** [UPON] referees by
4 laws;

5 (7) of the superior court in all respects, including contempts,
6 attendance of witnesses, and bench warrants;

7 (8) to order the temporary detention of a minor, or take other action
8 authorized by law or rules of procedure, in cases arising under AS 47.10 or AS 47.12,
9 when the minor is in a condition or surrounding dangerous or injurious to the welfare
10 of the minor or others that requires immediate action; the action may be continued in
11 effect until reviewed by the superior court in accordance with rules of procedure
12 governing these cases;

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

14 (A) domestic violence as provided in AS 18.66.100 -
15 18.66.180; [OR]

16 (B) stalking or sexual assault as provided in AS 18.65.850 -
17 18.65.870; **or**

18 **(C) gun violence as provided in AS 18.65.815 - 18.65.825;**

19 (10) to review an administrative revocation of a person's driver's
20 license or nonresident privilege to drive, and an administrative refusal to issue an
21 original license, when designated as a hearing officer by the commissioner of
22 administration and with the consent of the administrative director of the Alaska Court
23 System;

24 (11) to establish the fact of death or inquire into the death of a person
25 in the manner prescribed under AS 09.55.020 - 09.55.069;

26 (12) to issue an ex parte testing, examination, or screening order
27 according to the manner and procedure prescribed by AS 18.15.375.

28 * **Sec. 9.** AS 18.65.845 is repealed February 1, 2022.

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

31 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 18.65.835, added by sec. 6 of

1 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,
2 Alaska Rules of Administration, relating to fees and service of process for a gun violence
3 protective order.

4 (b) The provisions of sec. 6 of this Act have the effect of amending Rule 65, Alaska
5 Rules of Civil Procedure, by changing the method for obtaining, and the timing of, temporary
6 restraining orders.

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

9 **CONDITIONAL EFFECT.** AS 18.65.815 - 18.65.845, added by sec. 6 of this Act,
10 take effect only if sec. 10 of this Act receives the two-thirds majority vote of each house
11 required by art. IV, sec. 15, Constitution of the State of Alaska.

12 * **Sec. 12.** Section 7 of this Act takes effect February 1, 2022.