

Introduced: 3/14/79  
Referred: Judiciary

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1 IN THE HOUSE

2 HOUSE BILL NO. 392

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to domestic violence; and amending  
7 Rules 3, 65, and 76, Rules of Civil Procedure."

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

9 \* Section 1. AS 09.55 is amended by adding new sections to read:

10 ARTICLE 9. DOMESTIC VIOLENCE.

11 Sec. 09.55.650. DUTIES OF PEACE OFFICERS. (a) If a peace officer  
12 has reason to believe that an adult or an emancipated minor is a victim  
13 of domestic violence, the officer shall use all reasonable means to  
14 prevent further domestic violence and to assure the safety of the  
15 victim, including

16 (1) remaining on the scene of the domestic violence as long  
17 as there would be a danger to the physical safety of the victim without  
18 the presence of the peace officer;

19 (2) assisting the victim in obtaining emergency medical  
20 treatment if necessitated by an assault, including transportation to the  
21 emergency room of the nearest hospital or to the nearest health  
22 provider;

23 (3) assisting the victim in removing to a safe place nearby,  
24 or to the nearest facility offering shelter to victims of domestic  
25 violence;

26 (4) giving the victim immediate notice of rights provided  
27 under this section and of the existence of the nearest facility offering  
28 shelter to victims of domestic violence;

29 (5) arresting the assailant

1 (A) if the peace officer has reasonable cause to believe  
2 that the assailant has committed domestic violence which is a  
3 felony,

4 (B) if domestic violence which is a misdemeanor is  
5 committed in his presence, or

6 (C) under the circumstances set out in AS 12.25.030(b).

7 (b) The notice required in (a)(4) of this section includes the  
8 following written statement which the peace officer shall read and give  
9 to the victim:

10 "As a victim of domestic violence you have the right  
11 under law to demand that the officer present do the following  
12 things:

13 (1) stay as long as needed to make sure that you are safe;

14 (2) take you to the nearest hospital or health provider  
15 if you need medical care;

16 (3) take you to a place nearby where you will be safe if  
17 you want to leave here; and

18 (4) tell you how to contact the nearest organization that  
19 offers aid or shelter to victims of domestic violence.

20 You have the right to ask the court to issue an order to  
21 do any or all of the following things:

22 (1) order your attacker to stop hurting or threatening  
23 you or your children;

24 (2) order your attacker to get out of the house;

25 (3) order your attacker not to communicate with you  
26 in any way;

27 (4) give you temporary custody of your children;

28 (5) order your attacker to pay for your costs which  
29 result from the attack, including medical and moving costs,

1 loss of earnings or support, or other costs for injuries you  
2 or your children received.

3 If your attacker does not obey a court order to get out  
4 of the house or to leave you alone, your attacker can be  
5 arrested immediately. To get a court order contact the  
6 superior court in (name of place) and they will help you.  
7 You must do this within 10 days. To get an order quickly  
8 in an emergency, you may also contact the district court  
9 in (name of place) or (name of magistrate).

10 The court order is designed to protect you. You also  
11 have the right to file a criminal complaint against your  
12 attacker."

13 (c) If the victim does not understand English, the officer shall  
14 make reasonable efforts to explain the rights provided in this section  
15 in a language the victim understands.

16 Sec. 09.55.660. ORDER FOR RELIEF. (a) A victim of domestic  
17 violence who is an adult or an emancipated minor may, within 10 days of  
18 the act of domestic violence, petition a superior court or, if the  
19 circumstances described in (c) of this section exist, petition a dis-  
20 trict judge or magistrate under (c) of this section for an order

21 (1) restraining the assailant from subjecting the petitioner  
22 to domestic violence;

23 (2) directing the assailant to vacate the home of the peti-  
24 tioner;

25 (3) restraining the assailant from contacting the petitioner;

26 (4) directing the assailant to pay support for the petitioner  
27 or for the minor children in the care of the petitioner if there is an  
28 independent legal obligation of the assailant to support the petitioner  
29 or the children;

1 (5) awarding temporary custody of a minor child to the peti-  
2 tioner;

3 (6) directing the assailant to pay the petitioner for losses  
4 suffered as a result of the domestic violence, including medical and  
5 moving expenses, loss of earnings or support, and other out-of-pocket  
6 losses resulting from injuries sustained.

7 (b) Upon receiving a petition under (a) of this section, the  
8 superior court shall schedule a hearing and shall provide at least three  
9 days notice to the respondent of the hearing and of the respondent's  
10 right to appear and to be heard either in person or by attorney. If,  
11 after the hearing, the superior court finds that the petitioner has been  
12 subjected to domestic violence by the respondent, the superior court may  
13 issue any of the orders for relief described in (a) of this section or  
14 any other order the superior court determines to be necessary for the  
15 protection of the health, safety and welfare of the petitioner or of a  
16 minor child in the care of the petitioner.

17 (c) The superior court or a district judge or magistrate may issue  
18 a temporary order without following the notice and hearing requirements  
19 of (b) of this section if (1) the petitioner demonstrates a substantial  
20 likelihood of immediate danger from the respondent to the health, safety  
21 or welfare of the petitioner or of a minor child in the care of the  
22 petitioner; and (2) the court or district judge or magistrate determines  
23 that the order is necessary to protect the petitioner or a minor child  
24 in the care of the petitioner. Immediately after issuing a temporary  
25 order under this subsection or upon receiving notice of an order issued  
26 by a district judge or magistrate under this subsection, the superior  
27 court shall notify the respondent and give the respondent an opportunity  
28 to be heard as soon as possible, but in no event later than 10 days,  
29 after the order is issued on the question of continuing the temporary

1 order.

2 (d) Relief granted by a superior court under this section shall be  
3 for a fixed period of time not to exceed 45 days; however, upon motion  
4 by the petitioner and after hearing, the superior court may issue an  
5 order for an additional period of time as it considers necessary to  
6 protect the petitioner from domestic violence. The superior court may  
7 modify its order at any time upon petition of either party.

8 (e) Proceedings under this section do not preclude any other  
9 available civil or criminal remedies.

10 Sec. 09.55.665. FORMS FOR FILING PETITION. The Alaska court  
11 system, in cooperation with interested persons and organizations, shall  
12 prepare forms and instructions for the use of persons seeking an order  
13 for relief under AS 09.55.660, including forms for waiving filing fees  
14 on the basis of indigency. The forms shall conform to the requirements  
15 of AS 09.55.660 and the Alaska Rules of Civil Procedure, except that  
16 information on the forms may be filled in by legible handwriting. The  
17 office of the clerk of each superior court shall make the forms and  
18 instructions available to the public.

19 Sec. 09.55.670. NOTIFICATION TO LAW ENFORCEMENT AGENCIES. If a  
20 superior court, district judge or magistrate issues an order described  
21 in AS 09.55.660(a)(1), (2) or (3), the superior court, district judge or  
22 magistrate shall transmit a copy of the order to the appropriate local  
23 law enforcement agency. Law enforcement agencies shall establish pro-  
24 cedures adequate to inform their peace officers of the existence and  
25 terms of orders transmitted to the law enforcement agencies under this  
26 section. Peace officers shall use every reasonable means to enforce the  
27 orders.

28 Sec. 09.55.680. TRAINING OF PEACE OFFICERS. Law enforcement  
29 agencies shall establish training procedures for peace officers, or

1 shall include training in existing training procedures for peace offi-  
2 cers, which acquaint peace officers with the rights of the victim of  
3 domestic violence, the types of orders which may be issued under AS 09.-  
4 55.660, and techniques for handling incidents of domestic violence which  
5 promote the safety of the victim and reduce the likelihood of recur-  
6 rence.

7 Sec. 09.55.690. CRIMINAL PENALTIES. (a) Violation of an order  
8 described in AS 09.55.660(a)(1), (2) or (3) is a misdemeanor punishable  
9 by imprisonment for up to 60 days, or by a fine of up to \$500, or by  
10 both. A second violation of an order described in AS 09.55.660(a)(1),  
11 (2) or (3) is punishable by no less than three days imprisonment.

12 (b) A peace officer shall arrest and detain a person found by the  
13 peace officer to be in violation of an order described in AS 09.55.660-  
14 (a)(1), (2) or (3) if the order is in full force and effect.

15 Sec. 09.55.700. DEFINITIONS. For the purposes of AS 09.55.650 -  
16 09.55.700,

17 (1) "domestic violence" means the intentional perpetration of  
18 any of the following acts by a person against a household member, a  
19 spouse, former spouse, or blood relative of the person:

20 (A) attempting to cause or causing physical harm to the  
21 other person or to a minor child in the care of the other person;

22 (B) placing the other person or a minor child in the  
23 care of the other person in fear of imminent serious physical harm;

24 (C) causing the other person to engage involuntarily in  
25 sexual relations by force, threat of force or duress;

26 (2) "facility offering shelter to victims of domestic vio-  
27 lence" includes facilities offering programs which provide emergency or  
28 short-term lodging or housing for adults who are victims of domestic  
29 violence and their children.

1 \* Sec. 2. AS 18.55.330 is amended to read:

2       Sec. 18.55.330. PREFERENCE TO VETERANS AND TO VICTIMS OF DOMESTIC  
3 VIOLENCE. (a) The authority shall initially offer 50 per cent of the  
4 dwelling units in a housing project for rent or sale to veterans. The  
5 offer shall be by publication of reasonable notice in a newspaper cir-  
6 culated in the area in which the housing project is located. The autho-  
7 rity shall set aside these units for rental or sale to veterans for at  
8 least 30 days following first publication of the notice before making  
9 them available to other residents. If, after an additional 30 days a  
10 unit remains unassigned, the authority may rent or sell it to any person  
11 in the state, provided that victims of domestic violence who move from  
12 their homes to avoid further domestic violence [RESIDENTS] have first  
13 preference and other residents have second preference.

14       (b) Victims of domestic violence who move from their homes to  
15 avoid further domestic violence have first preference for dwelling units  
16 in a housing project not set aside for veterans under (a) of this sec-  
17 tion.

18       (c) The authority shall adopt regulations in accordance with the  
19 Administrative Procedure Act (AS 44.62) to implement the preference in  
20 this section for victims of domestic violence. The regulations shall  
21 include criteria for determining when a person is a victim of domestic  
22 violence based upon the criteria in AS 09.55.650 - 09.55.700.

23 \* Sec. 3. AS 22.15.100 is amended by adding a new paragraph to read:

24       (9) to issue a temporary order in domestic violence cases as  
25 provided in AS 09.55.660(c); the district judge or magistrate shall  
26 notify the superior court immediately upon issuance of the temporary  
27 order.

28 \* Sec. 4. Section 1 of this Act has the effect of amending Rule 3, Alaska  
29 Rules of Civil Procedure, by allowing courts to proceed upon the filing of a

1 petition rather than a complaint, and Rule 76, Alaska Rules of Civil Pro-  
2 cedure, by allowing the courts to accept for filing petitions which are hand-  
3 written in part. Section 1 of this Act also has the effect of amending Rule  
4 65, Alaska Rules of Civil Procedure, by establishing an alternate procedure  
5 for obtaining orders for relief from domestic violence.

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