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Cotten, et al

Offered: 2/13/80  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 392 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to domestic violence, and changing  
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 a reasonable belief that an adult or an emancipated minor is a  
13 victim of domestic violence, the officer shall use all reasonable means  
14 to 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 the officer believes that there would be a danger to the physical  
18 safety of the victim without the presence of the peace officer;

19 (2) assisting the victim in obtaining emergency medical  
20 treatment, including transportation to the emergency room of the nearest  
21 hospital or to the nearest health provider, if the peace officer be-  
22 lieves that emergency medical treatment is necessary;

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

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 as provided in AS 12.25.030.

1 (b) The notice required in (a)(4) of this section includes the  
2 following written statement which the peace officer shall give to the  
3 victim and shall also read to the victim if circumstances allow:

4 "As a victim of domestic violence you may request  
5 that the officer present do the following things:

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

7 (2) take you to the nearest hospital or health provider  
8 if you need medical care.

9 As a victim of domestic violence you have the right to  
10 demand that the officer present do the following things:

11 (1) take you to a place nearby where you will be safe if  
12 you want to leave here; and

13 (2) tell you how to contact the nearest organization that  
14 offers aid or shelter to victims of domestic violence.

15 You have the right to ask the court to issue an order  
16 protecting you and the children from domestic violence and  
17 providing other necessary assistance, which may include  
18 ordering the attacker out of the home and giving you temporary  
19 custody of the children.

20 If the attacker does not obey a court order to get out  
21 of the house or to leave you alone, the attacker can be  
22 arrested immediately. To get a court order contact the  
23 superior court in (name of place) and they will help you.  
24 You must do this within 10 DAYS. To get an order quickly  
25 in an emergency, you may also contact the district court  
26 in (name of place) or (name of magistrate).

27 The court order is designed to protect YOU or the  
28 children. You also have the right to file a criminal  
29 complaint against the attacker."

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

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

9 (1) restraining the assailant from subjecting the petitioner  
10 to domestic violence;

11 (2) directing the assailant to vacate the home of the peti-  
12 tioner;

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

14 (4) directing the assailant to pay support for the petitioner  
15 or for the minor children in the care of the petitioner if there is an  
16 independent legal obligation of the assailant to support the petitioner  
17 or the children;

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

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

24 (b) Upon receiving a petition under (a) of this section, the  
25 superior court shall schedule a hearing and shall provide at least three  
26 days notice to the respondent of the hearing and of the respondent's  
27 right to appear and to be heard either in person or by attorney. If,  
28 after the hearing, the superior court finds the allegations of the  
29 petitioner to be true, the superior court may issue any of the orders

1 for relief described in (a) of this section or any other order the  
2 superior court determines to be necessary for the protection of the  
3 health, safety and welfare of the petitioner or of a minor child in the  
4 care of the petitioner.

5 (c) The superior court or a district judge or magistrate may issue  
6 a temporary order without following the notice and hearing requirements  
7 of (b) of this section if (1) the petitioner demonstrates a substantial  
8 likelihood of immediate danger from the respondent to the health, safety  
9 or welfare of the petitioner or of a minor child in the care of the  
10 petitioner; and (2) the court or district judge or magistrate determines  
11 that the order is necessary to protect the petitioner or a minor child  
12 in the care of the petitioner. Immediately after issuing a temporary  
13 order under this subsection or upon receiving notice of an order issued  
14 by a district judge or magistrate under this subsection, the superior  
15 court shall notify the respondent and give the respondent an opportunity  
16 to be heard as soon as possible, but in no event later than 10 days,  
17 after the order is issued on the question of continuing the temporary  
18 order.

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

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

27 Sec. 09.55.665. FORMS FOR FILING PETITION. The Alaska court  
28 system, in cooperation with interested persons and organizations, shall  
29 prepare forms and instructions for the use of persons seeking an order

1 for relief under AS 09.55.660, including forms for waiving filing fees  
2 on the basis of indigency. The forms shall conform to the requirements  
3 of AS 09.55.660 and the Alaska Rules of Civil Procedure, except that  
4 information on the forms may be filled in by legible handwriting. The  
5 office of the clerk of each superior court shall make the forms and  
6 instructions available to the public.

7 Sec. 09.55.670. NOTIFICATION TO LAW ENFORCEMENT AGENCIES. If a  
8 superior court, district judge or magistrate issues an order described  
9 in AS 09.55.660(a)(1), (2) or (3), the superior court, district judge or  
10 magistrate shall transmit a copy of the order to the appropriate local  
11 law enforcement agency. Law enforcement agencies shall establish pro-  
12 cedures adequate to inform their peace officers of the existence and  
13 terms of orders transmitted to the law enforcement agencies under this  
14 section. Peace officers shall use every reasonable means to enforce the  
15 orders.

16 Sec. 09.55.680. TRAINING OF PEACE OFFICERS. Law enforcement  
17 agencies shall establish training procedures for peace officers, or  
18 shall include training in existing training procedures for peace offi-  
19 cers, which acquaint peace officers with the rights of the victim of  
20 domestic violence, the types of orders which may be issued under AS 09.-  
21 55.660, and techniques for handling incidents of domestic violence which  
22 promote the safety of the victim and reduce the likelihood of recur-  
23 rence.

24 Sec. 09.55.690. CRIMINAL PENALTIES. (a) An intentional violation  
25 of an order described in AS 09.55.660(a)(1) or (2) or an intentional  
26 violation of an order described in AS 09.55.660(a)(3) involving the  
27 confrontation of the victim of domestic violence by the assailant is a  
28 class B misdemeanor. A second intentional violation of an order des-  
29 cribed in this section is punishable by a minimum sentence of imprison-

1 ment of not less than 72 consecutive hours. The execution of a sentence  
2 may not be suspended and probation or parole may not be granted until  
3 the minimum imprisonment provided in this section has been served. The  
4 imposition of sentence may not be suspended, except upon condition that  
5 the defendant be imprisoned for no less than the minimum period provided  
6 in this section.

7 (b) A peace officer may arrest a person if he has reasonable cause  
8 for believing that the person has violated an order described in (a) of  
9 this section.

10 Sec. 09.55.700. DEFINITIONS. For the purposes of AS 09.55.650 -  
11 09.55.700,

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

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

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

19 (C) causing the other person to engage in sexual relations  
20 without consent as defined in AS 11.41.470(3);

21 (2) "facility offering shelter to victims of domestic vio-  
22 lence" includes a facility offering programs which provide emergency or  
23 short-term lodging or housing for adults who are victims of domestic  
24 violence and their children.

25 \* Sec. 2. AS 12.25.030(b) is amended to read:

26 (b) In addition to the authority granted under (a) of this sec-  
27 tion, a peace officer without a warrant

28 (1) may arrest a person when he has reasonable cause for  
29 believing that the person has committed assault in the third degree

1 under AS 11.41.230(a)(1) against a member of the person's household;  
2 (2) may arrest a person when he has reasonable cause for be-  
3 lieving that the person has committed an offense listed in AS 09.55.-  
4 690(a).

5 \* Sec. 3. AS 18.55.330 is amended to read:

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

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

23 (c) The authority shall adopt regulations in accordance with the  
24 Administrative Procedure Act (AS 44.62) to implement the preference in  
25 this section for victims of domestic violence. The regulations shall  
26 include criteria for determining when a person is a victim of domestic  
27 violence based on AS 09.55.650 - 09.55.700.

28 (d) The preferences in this section for veterans and victims of  
29 domestic violence apply to state housing projects. These preferences

1 also apply to housing projects receiving financial aid, assistance, or  
2 cooperation from the federal government unless the United States Depart-  
3 ment of Housing and Urban Development prohibits or disapproves the pre-  
4 ferences.

5 \* Sec. 4. AS 22.15.100 is amended by adding a new paragraph to read:

6 (9) to issue a temporary order in domestic violence cases as  
7 provided in AS 09.55.660(c); the district judge or magistrate shall  
8 notify the superior court immediately upon issuance of a temporary order  
9 under this paragraph.

10 \* Sec. 5. Section 1 of this Act has the effect of changing Rule 3, Rules  
11 of Civil Procedure, by enacting a provision that allows a court to proceed  
12 upon the filing of a petition rather than a complaint, and Rule 76, Rules of  
13 Civil Procedure, by enacting a provision that allows a court to accept for  
14 filing petitions which are handwritten in part. Section 1 of this Act also  
15 has the effect of changing Rule 65, Rules of Civil Procedure, by enacting a  
16 provision that establishes an alternate procedure for obtaining orders for  
17 relief from domestic violence.

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