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Cotten, et al

Offered: 5/24/80
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

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SENATE CS FOR CS FOR HOUSE BILL NO. 392

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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ARTICLE 9. DOMESTIC VIOLENCE.

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Sec. 09.55.600. INJUNCTIVE RELIEF IN CASES INVOLVING DOMESTIC

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VIOLENCE. (a) A person who is subjected to domestic violence may
petition a superior court for injunctive relief restraining the inflic-
tion of further domestic violence against the petitioner by the respon-
dent.

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(b) Upon receiving a petition under (a) of this section, the
superior court shall schedule a hearing and shall provide at least 10
days notice to the respondent of the hearing and of the respondent's
right to appear and to be heard either in person or by attorney. If, at
the hearing, the superior court finds that the petitioner has been
subjected to domestic violence by the respondent, the superior court may
issue any order it determines to be necessary for the protection of the
health, safety or welfare of the petitioner or of a minor child in the
care of the petitioner. An order under this subsection may include
provisions which

(1) restrain the respondent from subjecting the petitioner to
domestic violence;

(2) direct the respondent to vacate the home of the peti-
tioner;

1 (3) restrain the respondent from communicating directly or
2 indirectly with the petitioner;

3 (4) direct the respondent to pay support for the petitioner
4 or for a minor child in the care of the petitioner if there is an inde-
5 pendent legal obligation of the respondent to support the petitioner or
6 the child;

7 (5) award temporary custody of a minor child to the peti-
8 tioner;

9 (6) direct the respondent to pay for medical expenses incurred
10 by the petitioner as a result of the domestic violence.

11 (c) An order issued under this section shall remain in effect for
12 a period of time not to exceed 45 days. However, the petitioner may
13 petition the superior court for extensions of a provision of the order
14 if the provision is described in (b)(1), (b)(2) or (b)(3) of this sec-
15 tion. If the superior court, after notice to the respondent of and a
16 hearing on the petition for the extension in accordance with the proce-
17 dures described in (b) of this section, finds that an extension of the
18 provision of the order is necessary to protect the petitioner from
19 domestic violence, the superior court may extend those provisions of the
20 order for a period of time not to exceed 45 days.

21 (d) Proceedings under this section do not preclude any other
22 available civil or criminal remedies.

23 Sec. 09.55.610. EMERGENCY INJUNCTIVE RELIEF IN CASES INVOLVING
24 DOMESTIC VIOLENCE. (a) A person who has been subjected to domestic
25 violence may petition the superior court for a temporary order providing
26 for emergency injunctive relief restraining the infliction of further
27 domestic violence against the petitioner by the respondent. If there is
28 no superior court within 50 road miles of the residence of the person
29 subjected to domestic violence, the person may petition the nearest

1 district court for a temporary emergency injunctive relief order. If
2 there is no district court within 50 road miles of the residence of the
3 person subjected to domestic violence, the person may petition the
4 nearest magistrate for a temporary emergency injunctive relief order.
5 The district court or magistrate shall notify the superior court imme-
6 diately upon issuance of an order granting emergency injunctive relief
7 under this section.

8 (b) An order under this section may be granted without written or
9 oral notice to the respondent if the court finds that the petitioner has
10 been subjected to domestic violence and

11 (1) it clearly appears that there is a substantial likelihood
12 of immediate danger from the respondent to the health, safety, or welfare
13 of the petitioner or of a minor child in the care of the petitioner; and

14 (2) the petitioner or the petitioner's attorney certifies to
15 the court in writing the efforts, if any, which have been made to provide
16 notice to the respondent and the reasons supporting the claim that
17 notice should not be required.

18 (c) An order issued under this section may include a provision
19 described in AS 09.55.600(b). The order shall be endorsed with the date
20 and hour of issuance, shall be filed in the clerk's office and entered
21 in the records of the court, and shall state the reason that it was
22 granted without notice. The order shall remain in effect for a period
23 not to exceed 10 days, unless extended by the court for good cause. The
24 reasons for the extension shall be entered in the records of the court.

25 (d) If an order under this section is granted without notice, a
26 hearing before the superior court for injunctive relief under AS 09.55.-
27 600 shall be scheduled by the superior court at the earliest possible
28 time consistent with the notice provisions of AS 09.55.600. If at the
29 hearing the petitioner does not proceed with the petition for injunctive

1 relief, the superior court shall dissolve the emergency injunctive
2 relief order.

3 (e) On two days notice to the petitioner, or on shorter notice as
4 the superior court may prescribe, the respondent may make a motion to
5 the superior court for the dissolution or modification of an order for
6 emergency injunctive relief under this section. The superior court
7 shall hear and rule on the motion in an expeditious manner.

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

10 Sec. 09.55.620. FORMS FOR FILING PETITION. (a) 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 09.55.600 or 09.55.610, including forms for waiving
14 filing fees on the basis of indigency. The forms shall conform to the
15 requirements of AS 09.55.600 and 09.55.610 and the Alaska Rules of Civil
16 Procedure, except that information on the forms may be filled in by
17 legible handwriting. The office of the clerk of each superior and
18 district court shall make the forms and instructions available to the
19 public.

20 (b) The form for a petition prepared under (a) of this section
21 shall include a notice that a false statement made in it stating that
22 the respondent has subjected the petitioner to domestic violence consti-
23 tutes the crime of unsworn falsification under AS 11.56.210, which is
24 punishable by a maximum term of imprisonment of one year and a \$5,000
25 fine.

26 Sec. 09.55.630. NOTIFICATION TO LAW ENFORCEMENT AGENCIES. If a
27 superior court, district court, or magistrate issues an order under
28 AS 09.55.600 or 09.55.610 restraining a respondent from subjecting a
29 petitioner to domestic violence, the superior court, district court, or

1 magistrate shall transmit a copy of the order to the appropriate local
2 law enforcement agency. Each law enforcement agency shall establish
3 procedures to inform their peace officers of copies of the orders re-
4 ceived by the law enforcement agency under this section. Peace officers
5 shall use every reasonable means to enforce an order issued under AS 09.-
6 55.600 or 09.55.610.

7 Sec. 09.55.640. DEFINITIONS. For the purposes of AS 09.55.600 -
8 09.55.640, "domestic violence" means a crime under AS 11.41 committed
9 against a spouse, a former spouse, or a member of the social unit com-
10 prised of those living together in the same dwelling as the respondent.

11 * Sec. 2. AS 12.55.135 is amended by adding a new subsection to read:

12 (c) A defendant convicted of assault in the third degree committed
13 in violation of the provisions of an order issued under AS 09.55.600 or
14 09.55.610 shall be sentenced to a minimum term of imprisonment of 10
15 days. The execution of sentence may not be suspended and probation or
16 parole may not be granted until the minimum term of imprisonment has
17 been served. Imposition of sentence may not be suspended, except upon
18 condition that the defendant be imprisoned for no less than the minimum
19 term of imprisonment provided in this section, and the minimum sentence
20 provided for in this section may not be otherwise reduced.

21 * Sec. 3. AS 18.65 is amended by adding new sections to read:

22 ARTICLE 6. DOMESTIC VIOLENCE.

23 Sec. 18.65.510. DOMESTIC VIOLENCE TRAINING. (a) Each established
24 police training program in the state shall provide training that ac-
25 quaints police officers with

26 (1) laws relating to substantive crimes and rules of criminal
27 procedure applicable in cases involving domestic violence;

28 (2) techniques for handling incidents of domestic violence
29 which promote the safety of the victim and the officer and which reduce

1 the likelihood of recurrence;

2 (3) organizations in the state that offer aid or shelter to
3 victims of domestic violence;

4 (4) procedures applicable in the prosecution of cases involv-
5 ing domestic violence;

6 (5) orders that may be issued by a court under AS 09.55.600
7 and 09.55.610; and

8 (6) the notification that shall be given to victims of domes-
9 tic violence under AS 18.65.520.

10 (b) In providing a training program under this section, each
11 agency or institution offering an established police training program
12 shall consult with interested individuals and organizations providing
13 assistance to victims of domestic violence.

14 Sec. 18.65.520. NOTIFICATION TO VICTIMS OF DOMESTIC VIOLENCE. (a)
15 During the course of responding to an offense involving domestic vio-
16 lence, a police officer shall orally or in writing inform the victim of
17 services available to the victim and the rights of the victim, substan-
18 tially as follows:

19 As a victim of domestic violence you should
20 be aware of the following:

21 (1) In some places in Alaska there are
22 organizations that provide aid and shelter to
23 victims of domestic violence. The nearest
24 such organization is located at _____.

25 (2) If you feel that there is a continuing
26 danger to your safety, please let me know and
27 I will make all possible efforts to insure your
28 safety.

29 (3) Alaska law provides that you may file an

1 application with the nearest court for a court
2 order protecting you and your children from
3 further harm. The forms to obtain the order are
4 available at the court. It is not necessary to
5 have an attorney to obtain a court order but one
6 may be of help to you. If you cannot afford to
7 hire an attorney, you should contact the nearest
8 Alaska Legal Services office which is located at

9 _____.
10 (4) Additionally, the victim/witness assist-
11 ance program of the Department of Law may be able
12 to help you. The nearest district attorney's
13 office is located at _____.

14 (b) If the victim of domestic violence does not understand English,
15 the police officer shall make reasonable efforts to inform the victim of
16 the services and rights specified in (a) of this section in a language
17 the victim understands.

18 (c) As used in this section "domestic violence" means a crime
19 under AS 11.41 committed against a spouse, a former spouse, or a member
20 of the social unit comprised of those living together in the same
21 dwelling as the person who committed the crime.

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

23 (9) to issue a temporary order for emergency injunctive
24 relief in cases involving domestic violence as provided in AS 09.55.610.

25 * Sec. 5. Section 1 of this Act has the effect of changing Rule 3, Rules
26 of Civil Procedure, by enacting a provision that allows a court to proceed
27 upon the filing of a petition rather than a complaint, and Rule 76, Rules of
28 Civil Procedure, by enacting a provision that allows a court to accept for
29 filing petitions which are handwritten in part. Section 1 of this Act also

1 has the effect of changing Rule 65, Rules of Civil Procedure, by enacting a
2 provision that establishes an alternate procedure for obtaining orders for
3 relief from domestic violence.

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