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Alaska State Legislature

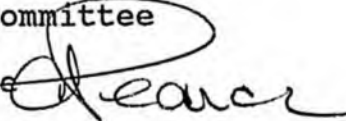
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During Session:
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Senator Drue Pearce
District G

MEMORANDUM

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Senator Drue Pearce 

RE: Request for hearing - SB 423

DATE: March 5, 1990

Senate Bill 423 passed from the Health, Education, and Social Services Committee today. I request that a hearing on this bill be scheduled at the earliest possible date in the Senate Judiciary Committee.

If you have questions, Jo Fenety of my office is the staff contact on this bill.

DP:jf

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Senator Drue Pearce District G

SPONSOR STATEMENT

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Senator Drue Pearce 

RE: Senate Bill 423

DATE: March 5, 1990

The rate of family violence in Alaska is very high. For instance, in 1988, 43% of all homicides were family violence homicides, while over 60% involved the use of a gun.

A study by the Abuse Prevention Project of the Municipality of Anchorage covered the period 1986-88. The study reviewed domestic violence restraining orders filed over a six-month period. They found that 65% of the alleged perpetrators had access to a gun. Interviews with victims revealed that 29% reported that earlier abuse in the relationship had included threats with a deadly weapon and 7% reported physical damage from a weapon.

Victims frequently seek help by requesting a restraining order. The most frequently mentioned reasons for requesting an emergency restraining order are fear for safety, threats of violence, and physical abuse. Still, mere possession of an emergency restraining order does not necessarily deter the perpetrator and violence may still erupt.

SB 423 raises the penalty for misconduct involving possession of a weapon by a person violating a domestic violence restraining order. Currently the offence constitutes assault in the fourth degree, which is a class A misdemeanor. This bill raises the offence to assault in the third degree, a class C felony.

The Alaska Network on Domestic Violence and Sexual Assault fully supports this change as does the Alaska Council on Domestic Violence and Sexual Assault.

February 16, 1990

Domestic Violence Committee
Lt. Shirley A. Warner, Chair
4501 S. Bragaw Street
Anchorage, Alaska 99507-1599

The Honorable Representative Alyce Hanley
P.O. Box V
Juneau, Alaska 99811

RE: Support for House Bill 340: An act relating to misconduct involving possession of a weapon by a person who is in violation of a domestic violence restraining order.

Dear Representative Hanley,

Thank you very much for sponsoring House Bill 340. The Domestic Violence Committee supports this bill as it provides an additional measure in the fight against domestic violence. The Domestic Violence Committee was formed in June 1988 for the purpose of discussing, clarifying, and revising any areas of concern regarding domestic violence. We represent a variety of governmental agencies who deal with domestic violence on a daily basis. 20 to 30 people are in attendance at each quarterly meeting to deal with significant issues.

The goal of the Committee is to insure optimum protection for victims of domestic violence through an expedient and efficient procedure for dealing with violators.

We feel this bill will further our success in dealing with this most volatile crime. Currently when an officer responds to the scene of a violation of a domestic violence writ, and the respondent is in possession of a deadly weapon, the most the officer is able to do is place the person under arrest for a misdemeanor.

Research has shown, and current cases within the State have proven, that deadly weapons have been used where the victim has been murdered during a violation of a writ.

The Committee feels the ideal would be that the respondent is warned via the writ that if he/she violates the writ, and is in possession of a deadly weapon, he/she shall be arrested for a felony. It is our hope that this addition would act as further deterrance in the injury and death of innocent people. In the event the respondent does not pay heed to this warning three things will occur: 1) an officer has the authority to arrest the respondent for a felony; 2) more time is allowed to pass providing for a "cooling off period"; 3) the respondent will become very aware of the seriousness of the crime and he/she will know the State is serious about this crime.

The following information should prove useful in your discussion with anyone who may oppose this worthwhile step in furthering the protection of victims of domestic violence.

From the National Women Abuse Prevention Project:

- * When battered women are killed by their abusers, it frequently occurs after they have been separated from them or taken other action to end the relationships.
- * FBI data indicate that 30% of female homicide victims are killed by their husbands or boyfriends. This translates into the death of four women per day at the hands of male partners.
- * An in-depth study of all one-on-one murder and non-negligent manslaughter cases from 1980-84 found that more than one-half (52%) of female victims were killed by male partners.
- * 40% of women seeking shelter services in Texas were abused with weapons.
- * Research suggests that spousal abuse results in more injuries that require medical treatment than rape, auto accidents, and muggings combined.

From Men Who Batter: An Integrated Approach for Stopping Wife Abuse, Edward W. Gondolf, Learning Publications, 1989:

- * In a study of domestic violence and the police in Kansas City, Missouri, it was found that police had responded to disturbance calls, at the address of homicide victims at least once in the two years before the homicide in 90% of the cases, and five or more times in 50% of the cases.

From the Statistical Study of Domestic Violence Cases: 1986-1988, in Anchorage:

- * Approximately 12% of the domestic violence victims experienced injury by weapons or objects.
- * Approximately 9% of the domestic violence victims were threatened with a knife, gun or other dangerous object.

If you have any questions, or if any member of this committee can assist in any way to insure the expeditious passage of this legislation, please call. Thank you.

Sincerely,

Lt. Shirley A. Warner
Chair, Domestic Violence Committee
Anchorage Police Department
786-8851

Nancy Scheetz-Freymiller
Executive Director
Abused Women's Aid in Crisis
272-0100

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1st Sgt. Dennis Casanovas
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Alaska State Troopers
269-5511

Sgt. Gary Apperson
Patrol Division
Anchorage Police Department
786-8500

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SENT BY: XEROX TELESCOPIER 7020

FORUM

Murder, by any other name, smells the same

SACRAMENTO — A week never passes without one of the calls; sometimes there are two or three in a day.

"My ex-husband just came in here and ripped up my clothes with a knife."

"My boyfriend broke the windows out of my car."

"Please, my husband's going to kill me ..."

The men come back again and again and again. They beat up their wives and girlfriends, they vandalize their cars, they call them in the middle of the night, they follow them home, they threaten to kill them and their children.

They say they do it for love.

Usually before a woman comes to the newspaper she has called a lawyer and the district attorney's office and the police department or the sheriff's office; usually she's called everybody she knows.

And once in a while, giving the system its due, somebody is arrested for assault or violating a restraining order and does a few days in the county jail, and learns from that to be more circumspect in the business of terrorizing people weaker than himself.

More often, the calls are ignored.

That or a cop shows up and tries to negotiate a peace himself. You can't blame the cop for that, by the way. A domestic crime is always complicated, it usually involves different versions of a story that



pete dexter

the cop doesn't know anything about, and so, unless someone is standing in the doorway with the kitchen knife in their leg, it's hard to figure out what happened.

So the cop wars every wily and leaves. And sometimes that's enough, and sometimes it isn't.

I am thinking now about Kathy Thomas, who was buried Tuesday in Fair Oaks Cemetery. She was the 25-year old kid who was shot three times at close range Wednesday morning, allegedly by her estranged husband, Richard Thomas.

"Allegedly", of course, is the legal term that I am obligated to throw into stories like this.

In this particular case, I would remind you that the word appears side by side with

the fact that witnesses saw Richard Thomas buy the gun, witnesses saw him come into the rental office where Kathy Thomas worked Wednesday morning, scream at her -- "I warned you" -- and shoot her, and witnesses saw him surrender to police and collapse.

Other witnesses watched him terrorize Kathy Thomas for years.

Records show she'd taken out a restraining order against him, that she'd charged him with assault and battery, that she'd called the sheriff's department two days before she was killed and reported that he'd tried to run her off the road.

You are entitled to look at all that and give Richard Thomas as much "allegedly" as you like.

And this being America, his attorneys are entitled to defend him in any way they can.

But now that I've said that -- acknowledged that Richard Thomas is entitled to a legal presumption of innocence and every protection of the law, that his attorneys are entitled to be attorneys -- let me also say that something one of his lawyers, Assistant Public Defender Kevin D. Clymo, offered up in the newspaper Saturday made me sick to my stomach.

I am not speaking here of Clymo's contention that Thomas was confused. "I don't think he understands what's going on," Clymo said. "He's been told he's charged

with murder. He's been told he killed his wife. He knows he's in jail. But I don't think he has a clue how long he's been there, what day it is, or what really happened."

Mr. Clymo is entitled to that, just as I'm entitled to remember the merciless stalking that preceded Kathy Thomas's death.

But the attorney didn't stop there.

He referred to the "pressure inside (Thomas's head) ... building up" and "psychiatric problems", and then offered this:

"If he hits upon a memory of anything that occurred, it'll be devastating. He really loved that woman. You can tell. He really loved her."

He really loved her.

And that turns my stomach.

I suppose am not as comforted by that word "love" as Mr. Clymo is, but perhaps I've heard it too much.

Too much to believe it has anything to do with hurting women, too much to believe that terrorism is a melancholy thing.

Kathy Thomas is in Fair Oaks Cemetery because Richard Thomas wasn't in jail. She asked for help and didn't get it.

It's the wrong time for cheap humanism.

She was taken too cheaply as it is:

Pete Dexter is a Sacramento Bee columnist.

Sec. 11.46.315. Possession of burglary tools. (a) A person commits the crime of possession of burglary tools if the person possesses a burglary tool with intent to use or permit use of the tool in the commission of

- (1) burglary in any degree;
- (2) a crime referred to in AS 11.46.130(a)(3); or
- (3) theft of services.

(b) As used in this section, "burglary tools" means

(1) nitroglycerine, dynamite, or any other tool, instrument, or device adapted or designed for use in committing a crime referred to in (a)(1)-(3) of this section; or

(2) any acetylene torch, electric arc, burning bar, thermal lance, oxygen lance, or other similar device capable of burning through steel, concrete, or other solid material.

(c) Possession of burglary tools is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Revisor's notes. — Formerly AS 11.61.230. Renumbered in 1989. Collateral references. — 13 Am. Jur. 2d, Burglary, §§ 74-77. 12A C.J.S., Burglary, §§ 43-48. Validity, construction and application of statutes relating to burglars' tools, 33 ALR3d 798.

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

- (1) on land with intent to commit a crime on the land; or
- (2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

NOTES TO DECISIONS

Conviction and sentence affirmed. — See *Roberts v. State*, 680 P.2d 503 (Alaska Ct. App. 1984). Cited in *Alfred v. State*, 758 P.2d 130 (Alaska Ct. App. 1988).

Collateral references. — 35 Am. Jur. 2d, Forcible Entry and Detainer, §§ 58-61; 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.; 75 Am. Jur. 2d, Trespass, §§ 86-94.

36 C.J.S. Forcible Entry and Detainer, § 1 et seq.; 54 C.J.S. Malicious Mischief, § 1 et seq.; 87 C.J.S. Trespass §§ 140-165.

Forcible detainer or trespass, where entry was peaceable, 49 ALR 597.

Right to use force to obtain possession of real property to which one is entitled, 141 ALR 273

Validity, construction, and application of statutes or ordinances penalizing one who enters or remains in dwelling after having been forbidden to do so, 146 ALR 655.

Injunction against repeated or continuing trespasses on real property, 60 ALR2d 310.

Uninvited entry into another's living quarters as invasion of privacy, 56 ALR3d 434.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

- (1) in or upon premises; or
- (2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has rea-

sonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

NOTES TO DECISIONS

Prerequisites for conviction. — In order to convict a defendant for the offense of criminal trespass, the state is obligated to prove beyond a reasonable doubt that he knowingly remained on the premises after personally being ordered to leave, and recklessly disregarded a lawful order that he not remain. *Johnson v. State*, 739 P.2d 781 (Alaska Ct. App. 1987).

Since this section is silent regarding *mens rea*, AS 11.81.610 is implicated. *Johnson v. State*, 739 P.2d 781 (Alaska Ct. App. 1987).

Cited in *Moxie v. State*, 662 P.2d 990 (Alaska Ct. App. 1983); *Arabic v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under AS 11.46.300, 11.46.310, 11.46.320, or 11.46.330(a)(1), it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in AS 11.46.300 — 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.

(c) A notice against trespass is given if the notice

(1) is printed legibly in English;

(2) is at least 144 square inches in size;

(3) contains the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property;

(4) is placed at each roadway and at each way of access onto the property that is known to the landowner;

(5) in the case of an island, is placed along the perimeter at each cardinal point of the island; and

(6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions. (§ 4 ch 166 SLA 1978; am § 9 ch 61 SLA 1982; am § 4 ch 168 SLA 1988)

Cross references. — For definition of terms used in this chapter, see AS 11.46.990; for definition of terms used in this title, see AS 11.81.900.

Effect of amendments. — The 1988 amendment added subsection (c).

NOTES TO DECISIONS

Constitutionality of AS 11.46.330. — Any possible vagueness that the phrase "after being lawfully directed to [leave the premises] personally by the person in charge," in paragraph (a)(2) imports into AS 11.46.330 is cured by literally reading AS 11.46.330 in light of the applicable mens rea. Since AS 11.46.330 is silent regarding mens rea, AS 11.81.610 is implicated. *Johnson v. State*, 739 P.2d 781 (Alaska Ct. App. 1987).

"Enters". — "Enters" means that the intruder enters by entry of his whole body, part of his body, or by insertion of any instrument that is intended to be used in the commission of a crime. *Sears v. State*, 713 P.2d 1218 (Alaska Ct. App. 1986).

The terms "building" and "premises" in AS 11.46.310, 11.81.900(b)(3) and this section are used interchangeably. *Arabie v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

Premises must be closed to public. — Under subsection (a) premises must be closed to the public for an unlawful act of entry or remaining to occur. *Arabie v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

"Remains unlawfully" does not include entry into a restricted area of a building which is otherwise open to the public. *Arabie v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

Quoted in *Plant v. State*, 724 P.2d 536 (Alaska Ct. App. 1986).

follow in the same situation. "Noise" does not include speech that is constitutionally protected.

(c) Disorderly conduct is a class B misdemeanor and is punishable as authorized in AS 12.55 except that a sentence of imprisonment, if imposed, shall be for a definite term of not more than 10 days. (§ 7 ch 166 SLA 1978; am § 6 ch 78 SLA 1983)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.40.080 and 11.45.030.

Constitutionality of former disorderly conduct statute. — See *Poole v. State*, 524 P.2d 286 (Alaska 1974); *State v. Martin*, 532 P.2d 316 (Alaska 1975).

Disorderly conduct statute cannot be applied to behavior which is constitutionally exempt from criminal prohibition. *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

"Fight" defined. — The word "fight", in paragraph (a)(5), means to struggle against a person in physical combat. *Walsh v. State*, 758 P.2d 124 (Alaska Ct. App. 1988).

Policemen presumed least likely to be provoked. — Insofar as the theory of disorderly conduct rests on the tendency of the actor's behavior to provoke violence in others, one must suppose that policemen, employed and trained to maintain order, would be least likely to be provoked to disorderly responses. *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

It is only in the most limited circumstances that speech may be punished. *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

For discussion of speech prohibited under former disorderly conduct statute, see *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

Telephone call criticizing public officer. — There is neither legislative language nor constitutional power to read this section as including within its ambit a single telephone call criticizing a public officer for the performance of his official duties. *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

That an officer was personally offended by defendant's telephone call did not render the defendant's conduct a crime. *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

As to application of former AS 11.40.080, prohibiting indecent exposure and exhibition, see *E.L.L. v. State*, 572 P.2d 786 (Alaska 1977).

Quoted in *Ingram v. State*, 703 P.2d 415 (Alaska Ct. App. 1985); *Norbert v. State*, 718 P.2d 160 (Alaska Ct. App. 1986); *Cavanaugh v. State*, 754 P.2d 757 (Alaska Ct. App. 1988).

Cited in *Jerrel v. State*, 765 P.2d 982 (Alaska Ct. App. 1988).

Collateral references. — 12 Am. Jur. 2d, *Breach of Peace, etc.*, §§ 18-40.

11 C.J.S., *Breach of the Peace*, §§ 1-16.

Failure or refusal to obey police officer's order to move on, on street, as disorderly conduct. 65 ALR2d 1152.

Misuse of telephones as disorderly conduct. 97 ALR2d 504.

Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct. 12 ALR3d 1448.

Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.

Insulting words addressed directly to police officer as breach of peace or disorderly conduct. 14 ALR4th 1252.

Sec. 11.61.120. Harassment. (a) A person commits the crime of harassment if, with intent to harass or annoy another person, that person

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call or a telephone call that threatens physical injury;

(5) subjects another person to offensive physical contact; or

(6) violates a provision of an order issued under AS 25.35.010(b) or 25.35.020 restraining the respondent from communicating directly or indirectly with the petitioner.

(b) Harassment is a class B misdemeanor. (§ 7 ch 66 SLA 1978; am § 10 ch 61 SLA 1982)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section. see AS 12.25.030(b).

NOTES TO DECISIONS

For case construing former AS 11.45.035 relating to illegal use of telephones, see *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971)

Quoted in *Allen v. State*, 759 P.2d 541 (Alaska Ct. App. 1988).

Cited in *Brower v. State*, 728 P.2d 645 (Alaska Ct. App. 1986).

Collateral references. — Misuse of telephones as disorderly conduct, 97 ALR2d 504.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state, 37 ALR4th 852.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass, 95 ALR3d 411.

Sec. 11.61.125. Distribution of child pornography. (a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for distribution, or in the state distributes, or in the state possesses, prepares, publishes, or prints with intent to distribute, any material that visually depicts conduct described in AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

Sec. 25.30.130. Modification of custody decree of another state.

NOTES TO DECISIONS

Cited in *Garding v. Garding*, 767 P.2d 183 (Alaska 1989).

Sec. 25.30.140. Filing and enforcement of custody decree of another state.

NOTES TO DECISIONS

Findings necessary for award of attorney's fees. — See *Kimmons v. Heldt*, 667 P.2d 1245 (Alaska 1983).

Sec. 25.30.900. Definitions.

NOTES TO DECISIONS

Quoted in *S.J. v. L.T.*, 727 P.2d 789 (Alaska 1986).

Chapter 35. Domestic Violence.

Section	Section
10. Injunctive relief in cases involving domestic violence	40. Service of process
20. Emergency injunctive relief in cases involving domestic violence	60. Definitions

Sec. 25.35.010. Injunctive relief in cases involving domestic violence. (a) A person who is subjected to domestic violence may petition a superior or district court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. The court may appoint a guardian ad litem or attorney to represent a minor who is subject to this chapter in the same manner as an attorney may be appointed under AS 25.24.310.

(b) Upon receiving a petition under (a) of this section, the 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 court finds that the petitioner has been subjected to domestic violence by the respondent, the 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 that

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

- (2) direct the respondent to vacate the home of the petitioner;
- (3) restrain the respondent from communicating directly or indirectly with the petitioner;
- (4) direct the respondent to pay support for the petitioner or for a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or the child;
- (5) award temporary custody of a minor child to the petitioner;
- (6) direct the respondent to pay medical expenses incurred by the petitioner as a result of the domestic violence;
- (7) direct the respondent to engage in personal or family counseling or mediation;
- (8) restrain the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner.

(c) An order issued under this section remains in effect for a period of time not to exceed 90 days. However, the petitioner may petition the court for an extension of a provision of the order if the provision is described in (b)(1), (b)(2), (b)(3), (b)(7), or (b)(8) of this section. If the court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary to protect the petitioner or a minor child in the care of the petitioner from domestic violence, the court may extend the provision of the order for a period of time not to exceed 45 days. The court may not grant more than one extension under this subsection.

(d) Proceedings under this section do not preclude any other available civil or criminal remedies. (§ 1 ch 139 SLA 1980; am §§ 3, 4 ch 61 SLA 1982; am § 6 ch 17 SLA 1985; am § 5 ch 43 SLA 1985)

Effect of amendments. — The first 1985 amendment in subsection (a) inserted "or district"; in subsection (b) in the introductory language deleted "superior" preceding "court" in three places and substituted "that" for "which," and at the end

of paragraph (7) added "or mediation"; and in subsection (c) deleted "superior" preceding "court" in three places.

The second 1985 amendment added the second sentence of subsection (a).

NOTES TO DECISIONS

Prohibiting contact with former spouse. — The superior court has jurisdiction, where appropriate, to enter a "no-contact" order, prohibiting a party from

making contact with his former spouse, in the context of a final decree of divorce. *Siggelkow v. State*, 731 P.2d 57 (Alaska 1987).

Sec. 25.35.020. Emergency injunctive relief in cases involving domestic violence. (a) A person who has been subjected to domestic violence may petition the superior or district court for a temporary order providing for emergency injunctive relief restraining the inflict-

tion of further domestic violence against the petitioner by the respondent.

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

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

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

(c) An order issued under this section may include a provision described in AS 25.35.010 (b), except an order for mediation. The order shall be endorsed with the date and hour of issuance, shall be filed in the clerk's office and entered in the records of the court, and shall state the reason that it was granted without notice. The order shall remain in effect for a period not to exceed 20 days, unless extended by the court for good cause. The reasons for the extension shall be entered in the records of the court.

(d) If an order under this section is granted without notice, a hearing before the court for injunctive relief under AS 25.35.010 shall be scheduled by the court at the earliest possible time consistent with the notice provisions of AS 25.35.010. If at the hearing the petitioner does not proceed with the petition for injunctive relief, the court shall dissolve the emergency injunctive relief order.

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

(f) Proceedings under this section do not preclude other available civil or criminal remedies. (§ 1 ch 139 SLA 1980; am §§ 5, 6 ch 61 SLA 1982; am §§ 7 — 10 ch 17 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) inserted "or district" preceding "court" and deleted the last three sentences of the subsection concerning securing emergency injunctive relief; added ", except an order for media-

tion" at the end of the first sentence of subsection (c); in subsection (d) deleted "superior" preceding "court" in three places; and in subsection (e) deleted "superior" preceding "court" in three places.

Sec. 25.35.040. Service of process. (a) Process issued under AS 25.35.010 or 25.35.020 shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipi-

pality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process issued under AS 25.35.010 or 25.35.020. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under AS 25.35.010 or 25.35.020.

(b) Service of process required under this section does not preclude a petitioner from using any other available means to serve process issued under AS 25.35.010 or 25.35.020. (§ 7 ch 61 SLA 1982; am §§ 3, 4 ch 27 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a) added the second and fourth sentences and in the third sentence substituted "a peace officer of the municipality or unincorporated community who has jurisdiction" for "a state peace officer" and added subsection (b).

Sec. 25.35.060. Definitions. In this chapter, "domestic violence" means a crime under AS 11.41 when the victim is a spouse or a former spouse of the respondent; a parent, grandparent, child, or grandchild of the respondent; a member of the social unit comprised of those living together in the same dwelling as the respondent; or a person who is not a spouse or former spouse of the respondent but who previously lived in a spousal relationship with the respondent. (§ 139 SLA 1980; am § 8 ch 61 SLA 1982; am § 6 ch 43 SLA 1985)

Effect of amendments. — The 1985 amendment inserted "a parent, grandparent, child, or grandchild of the respondent" and made punctuation changes.

(7) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(8) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (c) of this section;

(11) "dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

* (13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression that the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance that the defendant does not intend to perform or knows will not be performed;

(15) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(16) "drug" has the meaning ascribed to it in AS 11.71.900(9);

BILL NO: HB 340

DATE: February 15, 1990

TITLE: Assault in violation of a
restraining order

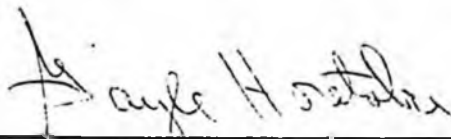
CONTACT: Barbara Miklos
465-4356

DEPARTMENT OF
PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports HB 340 which makes possession of a weapon by a person who harasses or trespasses in violation of a domestic violence restraining order a Class C felony. The legislation accomplishes this by including two new provisions in the crime of misconduct involving weapons in the first degree: possessing a weapon while trespassing or harassing a person in violation of a restraining order. This change in statute is important because domestic violence situations can be very dangerous; the possession of a gun escalates the possibility of serious injury or death. Making these circumstances felony crimes reinforces the seriousness of these situations and provides greater scrutiny and control over the offender through various means, including supervised probation.

The need for this legislation is well documented. In 1988, firearms were used in 62% of the murders in Alaska. Forty-three percent of the murders in Alaska were either family members or in boyfriend-girlfriend relationships. Nationally, in 1988, firearms were used in 61% of the murders; 19% of the murders were committed by family members or a boyfriend-girlfriend. For female murder victims nationwide, 31% were slain by husband or boyfriends, and 5% of the male victims were killed by wives or girlfriends. These figures demonstrate both how frequently guns are used in murders, and how often the victims are people who are in a relationship where a domestic violence restraining order could be used.

The Council supports the passage of HB 340.



for ARTHUR ENGLISH
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Misconduct involving possession of a weapon
Sponsor: Senator Pearce, et al
Requestor: Senate HESS

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill is expected to have no fiscal impact on the Department of Public Safety.

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence and Sexual Assault
Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Phone: 465-4356
Date: 2/8/90
Date: 2-9-90
Page 1 of 1

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Corrections
 Title: "Misconduct involving weapon... in violation of domestic restraining order" BRU: _____
 Sponsor: Senator Pearce, et. al. Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	100.0	100.0	100.0	100.0	100.0	100.0
SUPPLIES	64.5	64.5	64.5	64.5	64.5	64.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	20.0	20.0	20.0	20.0	20.0	20.0
MISCELLANEOUS						
TOTAL OPERATING	194.5	194.5	194.5	194.5	194.5	194.5

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	194.5	194.5	194.5	194.5	194.5	194.5
FEDERAL FUNDS						
OTHER						
TOTAL	194.5	194.5	194.5	194.5	194.5	194.5

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Department of Corrections records show 705 arrests in 1989 (for criminal trespass 1° & 2° and harassment) of whom 105 served time. An estimated 10 inmates would fall under this new section charged with a Class C felony, 0-5 years. Average 1 year sentence x 10 inmates x \$80/day less 1/3 good time = \$194,472.

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: March 22, 1990

Approved by Commissioner: D. H. ... Date: March 22, 1990
 Agency: Department of Corrections

Distribution (by preparer):

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