

HOUSE BILL NO. 125

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE CLAMAN

Introduced: 4/5/19

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to workplace violence protective orders; relating to the crime of**
2 **violating a protective order; relating to the powers of district judges and magistrates;**
3 **amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of**
4 **Administration; and providing for an effective date."**

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

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

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

9 (1) issued, filed, or recognized under AS 18.66 and containing a
10 provision listed in AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to
11 commit an act with reckless disregard that the act violates or would violate a provision
12 of the protective order;

13 (2) issued or recognized under AS 18.65.850, 18.65.855, 18.65.860, or
14 18.65.867 and knowingly commits or attempts to commit an act that violates or would

1 violate a provision listed in AS 18.65.850(c)(1) - (3); [OR]

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

5 **(4) issued under AS 18.65.875 - 18.65.899 and knowingly commits**
 6 **or attempts to commit an act that violates or would violate a provision listed in**
 7 **AS 18.65.875(c).**

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

9 (c) In this section, "protective order" means an order issued, filed, or
 10 recognized under AS 13.26.450 - 13.26.460, **AS 18.65.850 - 18.65.899** [AS 18.65.850
 11 - 18.65.870], or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

24 (a) The Department of Public Safety shall maintain a central registry of
 25 protective orders issued by or filed with a court of this state under AS 13.26.450 -
 26 13.26.460, **AS 18.65.850 - 18.65.899** [AS 18.65.850 - 18.65.870], or AS 18.66.100 -
 27 18.66.180. The registry must include, for each protective order, the names of the
 28 petitioner and respondent, their dates of birth, and the conditions and duration of the
 29 order. The registry shall retain a record of the protective order after it has expired.

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

31 (b) A peace officer receiving a protective order from a court under

1 AS 13.26.450, 13.26.455, AS 18.65.850 - 18.65.855, **18.65.875, 18.65.877**, or
2 AS 18.66.100 - 18.66.180, a modified order issued under AS 13.26.460,
3 AS 18.65.860, **18.65.880**, or AS 18.66.120, or an order dismissing a protective order
4 shall take reasonable steps to ensure that the order, modified order, or dismissal is
5 entered into the central registry within 24 hours after being received.

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

7 **Article 12A. Workplace Violence Protective Orders.**

8 **Sec. 18.65.875. Protective orders; eligible petitioners; relief.** (a) An
9 employer may file a petition in the district or superior court for a protective order
10 against an individual who the employer reasonably believes

11 (1) committed an act of violence against the employer or an employee;
12 or

13 (2) made a threat of violence against the employer or an employee that
14 can reasonably be construed as a threat that may be carried out at the employer's
15 workplace.

16 (b) When a petition for a protective order is filed, the court shall schedule a
17 hearing and provide at least 10 days' notice to the respondent of the hearing and of the
18 respondent's right to appear and be heard, either in person or through an attorney. If
19 the court finds by a preponderance of evidence that the respondent has committed
20 violence or made a threat of violence, regardless of whether the respondent appears at
21 the hearing, the court may order any relief available under (c) of this section. The
22 provisions of a protective order issued under this section are effective for six months
23 unless earlier dissolved by the court.

24 (c) A protective order issued under this section may

25 (1) prohibit the respondent from making a threat to commit or
26 committing violence;

27 (2) prohibit the respondent from telephoning, contacting, or otherwise
28 communicating directly or indirectly with the petitioner or a designated employee of
29 the petitioner specifically named by the court;

30 (3) direct the respondent to stay away from the workplace of the
31 petitioner, or any specified place frequented by the petitioner or a named designated

1 employee of the petitioner, during the normal course of the petitioner's business;
 2 however, the court may order the respondent to stay away from the respondent's own
 3 workplace only if the respondent has been provided actual notice of the opportunity to
 4 appear and be heard on the petition;

5 (4) order other relief the court determines to be necessary to protect the
 6 workplace of the petitioner or a designated employee of the petitioner.

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

8 (1) make reasonable efforts to ensure that the order is understood by
 9 the petitioner and, if present at the hearing, by a named designated employee of the
 10 petitioner and the respondent; and

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

13 (e) A court may not deny a petition for a protective order solely because of a
 14 lapse of time between an act of violence or a threat of violence and the filing of the
 15 petition.

16 **Sec. 18.65.877. Ex parte protective orders for workplace violence.** An
 17 employer who may file a petition for a protective order against an individual under
 18 AS 18.65.875 may file a petition for an ex parte protective order against the
 19 individual. If the court finds that the petition establishes probable cause that recent
 20 violence has occurred or a recent threat of violence has been made, that it is necessary
 21 to protect the employer or a designated employee of the petitioner from further
 22 violence, and that the petitioner has certified to the court in writing the efforts, if any,
 23 that have been made to provide notice to the respondent, the court shall ex parte and
 24 without notice to the respondent issue a protective order. An ex parte protective order
 25 under this section may grant the protection allowed by AS 18.65.875(c). An ex parte
 26 protective order expires 20 days after it is issued unless dissolved earlier by the court
 27 at the request of either the petitioner or the respondent after notice and, if requested, a
 28 hearing. If the court issues an ex parte protective order, the court shall have the order
 29 delivered to the appropriate law enforcement agency for expedited service.

30 **Sec. 18.65.880. Modification of workplace violence protective order.** (a)
 31 Either the petitioner or the respondent may request modification of a protective order

1 issued under AS 18.65.875 or 18.65.877. If a request is made for modification of

2 (1) a protective order after notice and hearing under AS 18.65.875, the
3 court shall schedule a hearing within 20 days after the date the request is made, except
4 that if the court finds that the request is meritless on its face, the court may deny the
5 request without further hearing; or

6 (2) an ex parte protective order under AS 18.65.877, the court shall
7 schedule a hearing on three days' notice or on shorter notice as the court may
8 prescribe.

9 (b) If a request for a modification is made under this section and the
10 respondent raises an issue not raised by the petitioner, the court may allow the
11 petitioner additional time to respond.

12 (c) If the court modifies a protective order under this section, the court shall
13 issue a modified order and shall

14 (1) make reasonable efforts to ensure that the order is understood by
15 the petitioner and, if present at the hearing, by a named designated employee of the
16 petitioner and the respondent; and

17 (2) have the order delivered to the appropriate local law enforcement
18 agency for expedited service and for entry into the central registry of protective orders
19 under AS 18.65.540.

20 **Sec. 18.65.885. Specific protective orders.** (a) If a respondent in a protective
21 order issued under AS 18.65.875 - 18.65.880 is prohibited from communicating with
22 the petitioner or a named designated employee of the petitioner, excluded from the
23 petitioner's workplace, or ordered to stay away from the petitioner or a named
24 designated employee of the petitioner as provided in AS 18.65.875(c)(2) - (4), an
25 invitation by the petitioner or a named designated employee of the petitioner to
26 communicate, enter the petitioner's workplace or the residence or vehicle of a named
27 designated employee of the petitioner, or have other prohibited contact with the
28 petitioner or a named designated employee of the petitioner does not waive or nullify
29 any provision in a protective order.

30 (b) A court may not order parties into mediation or refer them to mediation for
31 resolution of the issues arising from a petition for a protective order under

1 AS 18.65.875 - 18.65.899.

2 (c) In addition to other required information contained in a protective order,
3 the order must include in bold face type the following statements:

4 (1) "Violation of this order may be a misdemeanor, punishable by up
5 to one year of incarceration and up to a \$25,000 fine";

6 (2) "If you are ordered to have no contact with the petitioner or a
7 named designated employee of the petitioner or to stay away from the petitioner's or a
8 named designated employee's workplace, residence, vehicle, or other place designated
9 by the court, an invitation by the petitioner or a named designated employee of the
10 petitioner to have the prohibited contact or to be present at or enter the workplace,
11 residence, vehicle, or other place does not in any way invalidate or nullify the order."

12 (d) A protective order issued under AS 18.65.875 - 18.65.899 is in addition to
13 and not in place of any other civil or criminal remedy. A petitioner is not barred from
14 seeking an order under AS 18.65.875 - 18.65.899 because of the existence of another
15 civil action between the petitioner or a named designated employee of the petitioner
16 and the respondent.

17 **Sec. 18.65.890. Forms for petitions and orders; fees.** (a) The Alaska Court
18 System shall prepare forms for petitions, protective orders, and instructions for their
19 use by an employer seeking a protective order under AS 18.65.875 - 18.65.899. The
20 forms must conform to the Alaska Rules of Civil Procedure, except that information
21 on the forms may be filled in by legible handwriting.

22 (b) In addition to other information required, a petition for a protective order
23 must include a statement of pending civil or criminal actions involving the petitioner,
24 a named designated employee of the petitioner, or the respondent. While a protective
25 order is in effect or a petition for a protective order is pending, both the petitioner and
26 the respondent have a continuing duty to inform the court of pending civil or criminal
27 actions involving the petitioner, a named designated employee of the petitioner, or the
28 respondent.

29 (c) The office of the clerk of each superior and district court shall make
30 available to the public under AS 18.65.875 - 18.65.899 the forms a person seeking a
31 protective order under AS 18.65.875 - 18.65.899 may need and instructions for the use

1 of the forms. The clerk shall provide assistance in completing the forms and filing the
2 forms.

3 (d) Filing fees may not be charged in any action seeking only the relief
4 provided in AS 18.65.875 - 18.65.899.

5 **Sec. 18.65.895. Service of process.** (a) Unless, on the record in court, the
6 respondent has already been provided a copy of the court's order, process issued under
7 AS 18.65.875 - 18.65.899 shall be promptly served and executed. If process is to be
8 served upon a respondent believed to be present or residing in a municipality, as
9 defined in AS 29.71.800, or in an unincorporated community, process shall be served
10 by a peace officer of that municipality or unincorporated community who has
11 jurisdiction within the area of service. If a peace officer of the municipality or
12 unincorporated community who has jurisdiction is not available, a superior court,
13 district court, or magistrate may designate any other peace officer to serve and execute
14 process. A state peace officer shall serve process in any area that is not within the
15 jurisdiction of a peace officer of a municipality or unincorporated community. A peace
16 officer shall use every reasonable means to serve process issued under AS 18.65.875 -
17 18.65.899. A judge may not order a peace officer to serve a petition that has been
18 denied by the court.

19 (b) Service of process under (a) of this section does not preclude a petitioner
20 from using any other available means to serve process issued under AS 18.65.875 -
21 18.65.899.

22 (c) Fees for service of process may not be charged in a proceeding seeking
23 only the relief provided in AS 18.65.875 - 18.65.899.

24 **Sec. 18.65.897. Civil liability.** (a) A person may not bring a civil action for
25 damages against the state, its officers, agents, or employees, or a law enforcement
26 agency, its officers, agents, or employees for any failure to comply with the provisions
27 of AS 18.65.875 - 18.65.899.

28 (b) A person may not bring a civil action for damages against an employer for
29 seeking or failing to seek a protective order unless an employer seeks a protective
30 order for an illegitimate purpose.

31 **Sec. 18.65.899. Definitions.** In AS 18.65.875 - 18.65.899,

- (1) "course of conduct" has the meaning given in AS 11.41.270;
- (2) "employee" has the meaning given in AS 18.80.300;
- (3) "employer" has the meaning given in AS 18.80.300;
- (4) "threat of violence" means a statement or course of conduct that recklessly places a person in fear of physical injury or death;
- (5) "violence" means a crime under AS 11.41 that injures a person or places a person in fear of physical injury or death;
- (6) "workplace" means a place of employment other than a place used primarily as a residence.

* **Sec. 7.** AS 22.15.100 is amended to read:

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

Each district judge and magistrate has the power

- (1) to issue writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, returnable before a judge of the superior court, and the same proceedings shall be had on the writ as if it had been granted by the superior court judge under the laws of the state in those cases;
- (2) of a notary public;
- (3) to solemnize marriages;
- (4) to issue warrants of arrest, summons, and search warrants according to manner and procedure prescribed by law and the supreme court;
- (5) to act as an examining judge or magistrate in preliminary examinations in criminal proceedings; to set, receive, and forfeit bail and to order the release of defendants under bail;
- (6) to act as a referee in matters and actions referred to the judge or magistrate by the superior court, with all powers conferred upon referees by laws;
- (7) of the superior court in all respects including contempts, attendance of witnesses, and bench warrants;
- (8) to order the temporary detention of a minor, or take other action authorized by law or rules of procedure, in cases arising under AS 47.10 or AS 47.12, when the minor is in a condition or surrounding dangerous or injurious to the welfare of the minor or others that requires immediate action; the action may be continued in

1 effect until reviewed by the superior court in accordance with rules of procedure
 2 governing these cases;

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

4 (A) domestic violence as provided in AS 18.66.100 -
 5 18.66.180; [OR]

6 (B) stalking or sexual assault as provided in AS 18.65.850 -
 7 18.65.870; **or**

8 **(C) workplace violence as provided in AS 18.65.875 -
 9 18.65.899;**

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

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

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

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

21 INDIRECT COURT RULE AMENDMENTS. (a) AS 18.65.895, added by sec. 6 of
 22 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,
 23 Alaska Rules of Administration, relating to fees and service of process for a workplace
 24 violence protective order.

25 (b) AS 18.65.875 - 18.65.899, added by sec. 6 of this Act, have the effect of
 26 amending Rule 65, Alaska Rules of Civil Procedure, by changing the method for obtaining
 27 and the timing of temporary restraining orders.

28 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 CONDITIONAL EFFECT. This Act takes effect only if sec. 8 of this Act receives the
 31 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of

1 Alaska.

2 * **Sec. 10.** If this Act takes effect under sec. 9 of this Act, it takes effect January 1, 2021.