

HOUSE BILL NO. 162

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE JOSEPHSON

Introduced: 4/14/23

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

(2) issued or recognized under AS 18.65.850, 18.65.855, 18.65.860, or 18.65.867 and knowingly commits or attempts to commit an act that violates or would violate a provision listed in AS 18.65.850(c)(1) - (3); [OR]

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

(4) issued under AS 18.65.815 - 18.65.825 and knowingly commits or attempts to commit an act that violates or would violate a provision listed in AS 18.65.815(c).

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

(c) In this section, "protective order" means an order issued, filed, or recognized under AS 13.26.450 - 13.26.460, **AS 18.65.815 - 18.65.825, 18.65.850 - 18.65.870** [AS 18.65.850 - 18.65.870], or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

(a) The Department of Public Safety shall maintain a central registry of protective orders issued by or filed with a court of this state under AS 13.26.450 - 13.26.460, **AS 18.65.815 - 18.65.825, 18.65.850 - 18.65.870** [AS 18.65.850 - 18.65.870], or AS 18.66.100 - 18.66.180. The registry must include, for each protective order, the names of the petitioner and respondent, their dates of birth, and the conditions and duration of the order. The registry shall retain a record of the

1 protective order after it has expired.

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

3 (b) A peace officer receiving a protective order from a court under
 4 AS 13.26.450, 13.26.455, AS 18.65.815, 18.65.820, 18.65.850, 18.65.855
 5 [AS 18.65.850 - 18.65.855], or AS 18.66.100 - 18.66.180, a modified order issued
 6 under AS 13.26.460, AS 18.65.825, 18.65.860 [AS 18.65.860], or AS 18.66.120, or an
 7 order dismissing a protective order shall take reasonable steps to ensure that the order,
 8 modified order, or dismissal is entered into the central registry within 24 hours after
 9 being received.

10 * **Sec. 6.** AS 18.65 is amended by adding new sections to article 11 to read:

11 **Sec. 18.65.815. Gun violence protective orders.** (a) A peace officer or
 12 household member who reasonably believes that a person is a danger to self or others
 13 by possessing, owning, purchasing, or receiving a firearm may file a petition in the
 14 district or superior court for a protective order against the person. The petition must
 15 include a description of the number, types, and locations of any firearms or
 16 ammunition the petitioner believes are owned or possessed by the respondent and the
 17 basis for the petition.

18 (b) When a peace officer or household member files a petition for a protective
 19 order, the court shall schedule a hearing and provide at least 10 days' notice to the
 20 respondent of the hearing and of the respondent's right to appear and be heard, either
 21 in person or through an attorney. If the court finds by clear and convincing evidence
 22 that the respondent is a danger to self or others by possessing, owning, purchasing, or
 23 receiving a firearm, regardless of whether the respondent appears at the hearing, the
 24 court may order the relief available under (c) of this section. The provisions of a
 25 protective order issued under this section are effective for six months unless earlier
 26 dissolved by the court.

27 (c) A protective order issued under this section shall prohibit the respondent
 28 from possessing, owning, purchasing, receiving, or attempting to purchase or receive a
 29 firearm or ammunition.

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

31 (1) make reasonable efforts to ensure that the order is understood by

1 the petitioner and by the respondent, if present;

2 (2) have the order delivered to the appropriate local law enforcement
3 agency for expedited service;

4 (3) direct the respondent to surrender to the appropriate law
5 enforcement agency or sell to a firearms dealer all firearms and ammunition that the
6 respondent possesses or owns within 24 hours after receiving the order.

7 **Sec. 18.65.820. Ex parte and emergency gun violence protective orders. (a)**

8 A peace officer or household member who reasonably believes that a person is a
9 danger to self or others may file a petition under AS 18.65.815 and request an ex parte
10 gun violence protective order. If the court finds that the petition establishes by a
11 preponderance of the evidence that the respondent poses a significant danger of injury
12 to self or others by possessing, owning, purchasing, or receiving a firearm, that less
13 restrictive alternatives have been tried and were ineffective, and that a peace officer
14 has certified to the court in writing the efforts, if any, that have been made to provide
15 notice to the respondent, the court shall ex parte and without notice to the respondent
16 issue a protective order. Before issuing the protective order, the court shall examine on
17 oath the petitioner and any witnesses the petitioner produces. The court may require
18 the petitioner and any witnesses to submit a written affidavit signed under oath instead
19 of examining the petitioner and witnesses. An ex parte protective order issued under
20 this subsection shall prohibit the respondent from possessing, owning, purchasing, or
21 receiving a firearm or ammunition. An ex parte protective order expires 20 days after
22 the order is issued unless dissolved earlier by the court at the request of either the
23 petitioner or the respondent after notice and, if requested, a hearing. If the court issues
24 an ex parte protective order, the court shall have the order delivered to the appropriate
25 law enforcement agency for expedited service.

26 (b) A peace officer may request an emergency gun violence protective order
27 from a judicial officer. A peace officer may make the request orally, either in person
28 or by telephone, or by submitting a sworn written statement. If the court finds by a
29 preponderance of the evidence that the respondent poses an immediate danger of
30 injury to self or others by possessing, owning, purchasing, or receiving a firearm and
31 that less restrictive alternatives have been tried and were ineffective, the court ex parte

1 shall issue an emergency protective order. An emergency protective order shall
 2 prohibit the respondent from possessing, owning, purchasing, or receiving a firearm or
 3 ammunition. An emergency protective order expires 72 hours after it is issued unless
 4 dissolved earlier by the court at the request of the petitioner. A peace officer who
 5 obtains an emergency protective order under this subsection shall

6 (1) place the provisions of an oral order in writing on a form provided
 7 by the court and file the written order with the issuing court by the end of the judicial
 8 day after the order is issued; and

9 (2) immediately serve a copy of the order on the respondent.

10 (c) In determining whether to issue a protective order under this section, the
 11 court may consider evidence that includes

12 (1) a recent act or threat of violence by the respondent against self or
 13 others, regardless of whether the act or threat involved a firearm;

14 (2) a pattern of acts or threats of violence by the respondent against
 15 self or others within the previous 12 months;

16 (3) behavior by the respondent that presents an imminent threat of
 17 harm to self or others;

18 (4) a violation of a protective order by the respondent;

19 (5) a previous or existing protective order against the respondent;

20 (6) the respondent's prior conviction of a crime that constitutes
 21 domestic violence as defined in AS 18.66.990;

22 (7) the respondent's ownership of, access to, or intent to possess a
 23 firearm;

24 (8) the unlawful or reckless use, display, or brandishing of a firearm by
 25 the respondent;

26 (9) a history of use, attempted use, or threatened use of physical force
 27 by the respondent against another person;

28 (10) the respondent's history of stalking another person;

29 (11) the prior arrest of the respondent for a felony offense or violent
 30 crime;

31 (12) corroborated evidence of the respondent's abuse of controlled

1 substances or alcohol;

2 (13) the respondent's recent acquisition of a firearm or ammunition.

3 **Sec. 18.65.825. Modification of gun violence protective order.** (a) A
4 petitioner or the respondent may request modification of a gun violence protective
5 order issued under AS 18.65.815 or 18.65.820(a). If a request is made for modification
6 of

7 (1) a protective order, after notice and hearing under AS 18.65.815, the
8 court shall schedule a hearing within 20 days after the date the request is made, except
9 that, if the court finds that the request is meritless on its face, the court may deny the
10 request without a hearing; or

11 (2) an ex parte protective order under AS 18.65.820(a), the court shall
12 schedule a hearing on three days' notice or on shorter notice as the court may
13 prescribe.

14 (b) If the court modifies a protective order under this section, the court shall
15 issue a modified order and shall

16 (1) make reasonable efforts to ensure that the order is understood by
17 the respondent, if present at the hearing; and

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

20 **Sec. 18.65.830. Surrender of firearms and ammunition.** (a) When a court
21 issues a gun violence protective order under AS 18.65.815 - 18.65.825, the court shall
22 order the respondent to surrender to the appropriate local law enforcement agency or
23 to sell to a firearms dealer all firearms and ammunition that the respondent possesses,
24 owns, or has within the respondent's custody or control within 24 hours after receiving
25 the protective order.

26 (b) Within 48 hours after receiving notice of the protective order, the
27 respondent shall file with the

28 (1) court an original receipt showing that all firearms and ammunition
29 have been surrendered to the local law enforcement agency or sold to a firearms
30 dealer; and

31 (2) local law enforcement agency that served the protective order a

1 copy of the receipt filed under (1) of this subsection.

2 (c) A law enforcement agency shall retain any firearms or ammunition
3 surrendered to the law enforcement agency under this section until the expiration of
4 the gun violence protective order. When the protective order expires, the law
5 enforcement agency shall return the firearms or ammunition to the respondent.

6 (d) A respondent who has surrendered firearms or ammunition to a law
7 enforcement agency and does not want the firearms or ammunition returned may sell
8 or transfer title of the firearms or ammunition to a firearms dealer.

9 (e) A person other than the respondent who claims title to any firearms or
10 ammunition surrendered under a protective order issued under AS 18.65.815 -
11 18.65.825 may petition the court to have the firearms or ammunition returned to the
12 person.

13 **Sec. 18.65.835. Service of process; forms for petitions and orders; fees;**
14 **warnings; notification; and pending civil or criminal actions.** (a) Service of
15 process of an order issued by the court under AS 18.65.815 - 18.65.825 shall be as
16 provided in AS 18.66.160 for service of process of domestic violence protective
17 orders.

18 (b) The Alaska Court System shall prepare forms for petitions and protective
19 orders and instructions for their use by a petitioner seeking a protective order under
20 AS 18.65.815 - 18.65.825. The forms must conform to the Alaska Rules of Civil
21 Procedure, except that information on the forms may be filled in by legible
22 handwriting. Filing fees may not be charged in an action seeking only the relief
23 provided in AS 18.65.815 - 18.65.840. Each protective order form must contain the
24 following statements in boldface type:

25 (1) "Violation of this order may be a misdemeanor, punishable by up
26 to one year of incarceration and a fine of up to \$10,000"; and

27 (2) "To the restrained person: this order will last until the date and time
28 noted above. You are required to surrender all firearms and ammunition that you own
29 or possess in accordance with AS 18.65.830, and you may not have in your custody or
30 control, own, purchase, possess, receive, or attempt to purchase or receive, a firearm
31 or ammunition while this order is in effect. You may seek the advice of an attorney as

1 to any matter connected with the order. The attorney should be consulted promptly so
2 that the attorney may assist you in any matter connected with the order."

3 (c) In addition to other information required, a petition for a protective order
4 must include a statement of pending civil and criminal actions involving the
5 respondent, if known. While a protective order is in effect or a petition for a protective
6 order is pending, both the petitioner and respondent have a continuing duty to inform
7 the court of pending civil and criminal actions involving the respondent, if known.

8 **Sec. 18.65.840. Notification of law enforcement agencies.** When a court
9 issues or accepts for filing a protective order under AS 18.65.815 - 18.65.825, the
10 court shall send a copy of the order to the appropriate local law enforcement agency.
11 Each law enforcement agency shall establish procedures to inform peace officers of
12 protective orders. Peace officers shall use every reasonable means to enforce a
13 protective order issued or filed under AS 18.65.815 - 18.65.825.

14 **Sec. 18.65.845. Definitions.** In AS 18.65.800 - 18.65.845, "household
15 member" means an individual who

16 (1) is or was formerly in a substantive dating relationship with the
17 respondent;

18 (2) is a current or former spouse of the respondent;

19 (3) is or was formerly engaged to the respondent;

20 (4) is residing with the respondent or has resided with the respondent;

21 (5) is related by blood to the respondent;

22 (6) is or was formerly related by marriage to the respondent; or

23 (7) has a child in common with the respondent or is currently pregnant
24 with the respondent's child.

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

26 **Sec. 22.15.100. Functions and powers of district judge and magistrate.**
27 Each district judge and magistrate has the power

28 (1) to issue writs of habeas corpus for the purpose of inquiring into the
29 cause of restraint of liberty, returnable before a judge of the superior court, and the
30 same proceedings shall be had on the writ as if it had been granted by the superior
31 court judge under the laws of the state in those cases;

- 1 (2) of a notary public;
- 2 (3) to solemnize marriages;
- 3 (4) to issue warrants of arrest, summons, and search warrants
- 4 according to manner and procedure prescribed by law and the supreme court;
- 5 (5) to act as an examining judge or magistrate in preliminary
- 6 examinations in criminal proceedings; to set, receive, and forfeit bail and to order the
- 7 release of defendants under bail;
- 8 (6) to act as a referee in matters and actions referred to the judge or
- 9 magistrate by the superior court, with all powers conferred on [UPON] referees by
- 10 laws;
- 11 (7) of the superior court in all respects, including contempts,
- 12 attendance of witnesses, and bench warrants;
- 13 (8) to order the temporary detention of a minor, or take other action
- 14 authorized by law or rules of procedure, in cases arising under AS 47.10 or AS 47.12,
- 15 when the minor is in a condition or surrounding dangerous or injurious to the welfare
- 16 of the minor or others that requires immediate action; the action may be continued in
- 17 effect until reviewed by the superior court in accordance with rules of procedure
- 18 governing these cases;
- 19 (9) to issue a protective order in cases involving
- 20 (A) domestic violence as provided in AS 18.66.100 -
- 21 18.66.180; [OR]
- 22 (B) stalking or sexual assault as provided in AS 18.65.850 -
- 23 18.65.870; or
- 24 **(C) gun violence as provided in AS 18.65.815 - 18.65.825;**
- 25 (10) to review an administrative revocation of a person's driver's
- 26 license or nonresident privilege to drive, and an administrative refusal to issue an
- 27 original license, when designated as a hearing officer by the commissioner of
- 28 administration and with the consent of the administrative director of the Alaska Court
- 29 System;
- 30 (11) to establish the fact of death or inquire into the death of a person
- 31 in the manner prescribed under AS 09.55.020 - 09.55.069;

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

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

5 INDIRECT COURT RULE AMENDMENTS. (a) AS 18.65.835, added by sec. 6 of
6 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,
7 Alaska Rules of Administration, relating to fees and service of process for a gun violence
8 protective order.

9 (b) The provisions of sec. 6 of this Act have the effect of amending Rule 65, Alaska
10 Rules of Civil Procedure, by changing the method for obtaining, and the timing of, temporary
11 restraining orders.

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

14 CONDITIONAL EFFECT. AS 18.65.815 - 18.65.845, added by sec. 6 of this Act,
15 take effect only if sec. 8 of this Act receives the two-thirds majority vote of each house
16 required by art. IV, sec. 15, Constitution of the State of Alaska.

17 * **Sec. 10.** This Act takes effect July 1, 2023.