ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 6, 2002
1:12 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 317
"An Act relating to stalking and amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

- HEARD AND HELD

CS FOR SENATE BILL NO. 169(FIN)
"An Act providing that the delinquency laws are inapplicable to minors who are at least 16 years of age and are accused of felony crimes against persons directed at victims because of the victims' race, sex, color, creed, physical or mental disability, ancestry, or national origin."

- BILL HEARING POSTPONED TO 03/18/02

PREVIOUS ACTION

BILL: HB 317
SHORT TITLE:STALKING & PROTECTIVE ORDERS
SPONSOR(S): REPRESENTATIVE(S)CRAWFORD

Jrn-Date	Jrn-Page		Action
01/14/02	1958	(H)	PREFILE RELEASED 1/11/02
01/14/02	1958	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1958	(H)	JUD, FIN
01/28/02	2086	(H)	COSPONSOR(S): GUESS

WITNESS REGISTER

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Capitol Building, Room 426
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 317.

DAVID D'AMATO, Staff
to Representative Harry Crawford
Alaska State Legislature
Capitol Building, Room 426
Juneau, Alaska 99801
POSITION STATEMENT: Assisted with the presentation of HB 317.

MARY A. WELLS
3665 Burl Court
Anchorage, Alaska 99504
POSITION STATEMENT: Related her experience as the victim of a stalker and spoke in support of HB 317.

LAUREE HUGONIN, Executive Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
130 Seward Street, Room 209
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 317 and responded to questions.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Testified in support of HB 317 and responded to questions.

BRUCE R. ROBERTS, Deputy Municipal Attorney
Criminal Division
Department of Law
Municipality of Anchorage
420 L Street, Suite 100
Anchorage, Alaska 99501
POSITION STATEMENT: During discussion of HB 317 provided comments and responded to questions.

ACTION NARRATIVE

TAPE 02-28, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:12 p.m. Representatives Rokeberg, Coghill, Meyer, and Berkowitz were present at the call to order. Representatives James and Kookesh arrived as the meeting was in progress.

HB 317 - STALKING & PROTECTIVE ORDERS

Number 0031

CHAIR ROKEBERG announced that the committee would hear HOUSE BILL NO. 317, "An Act relating to stalking and amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

Number 0060

REPRESENTATIVE BERKOWITZ moved to adopt committee substitute (CS) for HB 317, version 22-LS1258\J, Luckhaupt, 3/5/02, as a work draft. There being no objection, Version J was before the committee.

Number 0079

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor, remarked that the concept of HB 317 was brought to him by one of his constituents who was a victim of [stalking]. He opined that [the issue] of stalking needs to be addressed and that current statutes have a dangerous loophole. He explained that HB 317 "allows unacquainted victims of stalking to enjoy the security of a judicial protective order." He continued:

> Current law provides protection to those in domestic situations and [to] minor children, but enjoins the victims of strangers from equal protection of the law. [House Bill 317] allows the victims of stalking to seek and obtain a protective order in cases of stalking that are not crimes involving domestic violence. The bill streamlines the process for public safety and judicial practitioners by harmonizing the arrest and notification procedures to mirror those

already in place for domestic violence situations. The bill adds the crime of violation of a child protective order and of ... violation of a "stalking protective order." These changes also reflect existing practitioner procedures.

Number 0204

DAVID D'AMATO, Staff to Representative Harry Crawford, Alaska State Legislature, added that HB 317 is not a new idea. As a matter of fact, he noted, when domestic violence (DV) protective orders and the current laws relating to those orders were first contemplated, the legislature considered adding stalking protective orders at that time. He continued:

> The problem that they had, time and time again, was getting right the idea of being able to enjoin an individual, in an ex parte fashion - that is, before they have a chance to be heard - from doing things that would otherwise be lawful. The elements of stalking ... - walking past somebody's house, visiting a supermarket, going to work - are not, in and of themselves, crimes. However, it's the subjective belief of the individual affected - that they are being followed or that they are being harassed and stalked - which creates the elements of the crime of stalking.
>
> In this draft - [Version J] - of [HB 317], we believe we've gotten over that hurdle of that ex parte problem. I worked with Jerry Luckhaupt, ... [Legislative Counsel, Legal and Research Services Division, Legislative Affairs Agency], and he had drafted many of the original domestic violence provisions; he feels that we've gotten over that particular hump. What I'm referring to there specifically ... is Section 5. I think for clarification what I ought to do is walk you through - section by section - just the basic high points of the bill....
>
> Section 1 adds, in subsection [(e)(1)(B)], the language of "or injunction"; that's on page 1, line 14. This has to do with the distribution of alcohol. People, right now, who violate child protective orders are under no further restraint in their relationship with the distribution of alcohol, although those who

violate a domestic violence protective order are unable to distribute alcohol for a certain ... [amount] of time. This is simply a conforming change.

Number 0412

MR. D'AMATO, to clarify, referred to page 2, line 2, which states: "five years has elapsed from the person's unconditional discharge due to a conviction or adjudication as a delinquent for any of the following offenses". He said that this language, which modifies AS 04.11.494(e), prevents people who have gotten involved in driving-while-intoxicated (DWI) crimes, crimes involving domestic violence, or other crimes as listed in the remainder of that section from being involved in the distribution of alcohol. "It's a policy position," he added.

REPRESENTATIVE BERKOWITZ noted that "protective order" and "injunction" are different terms of art, and that [Section 1] adds "injunction" to the list.

MR. D'AMATO said that is correct.

CHAIR ROKEBERG remarked that there is a connection to Title 4 that troubles him.

MR. D'AMATO, noting that protective orders and protective injunctions are found in different statutes, explained that an adult gets a protective order when dealing with a domestic violence situation, whereas when an adult is barred from or is enjoined - hence the term "injunction" - from contacting or dealing with a minor under certain circumstances, it is called an injunction.

CHAIR ROKEBERG surmised, then, that an injunction is issued in order to protect a minor child from an adult.

MR. D'AMATO said that's right. After reiterating that Section 1 merely adds the protective injunction, he indicated that the first four sections and Section 6 contain conforming changes pertaining to protective injunctions. He mentioned that protective injunctions were initially left out of certain passages in the law and thus people are still allowed to do certain things - or are not held criminally liable for certain acts - if they have violated a protective injunction, though such is not the case when violating a protective order. In response to a question, he noted that the Department of Law

(DOL) characterizes the language [in HB 317] pertaining to injunctions as a conforming change.

Number 0628

MR. D'AMATO explained that Section 2 amends the existing crime of violating a protective order and adds to it the protective injunction. He elaborated:

> Same exact scenario, but what was happening here in this instance is that you could be charged with a crime if you violated a protective order; it was a separate crime. What got you to the protective order was a crime, but if you violated the protective order, that was another crime because a protective order is an order from the court. But what was happening was that [with] the protective injunction, there was no criminal statute that said directly, "If you violate this court order, that is a separate crime with these sort of elements." And [Section 2] just sets up that a protective injunction now has the same standard as the protective order.

MR. D'AMATO explained that Section 3 describes the situations under which a peace officer is either compelled or has the discretion to arrest. He elaborated:

> [Subsection] (b)(1) states that a peace officer "shall make an arrest under the circumstances described in [AS] 18.65.530". And [subsection] (b)(2) says, "without a warrant, may arrest a person if the officer has probable cause to believe the person [has], either in or outside the presence of the officer, [(A)] committed a crime involving domestic violence". And then [subparagraph] (B) is the change in the law: "committed the crime of violating a protective order or injunction." Again, it's another one of those conforming changes that [is] "stratifying it," essentially, for practitioners; so when a practitioner - a police officer in this instance - shows up on a doorstep, under suspicion that a protective injunction has been violated, he understands that he has the same obligations or discretion that he has under a violation of a protective order.

MR. D'AMATO explained that Section 4 sets out the conditions under which a mandatory arrest must occur, and this is when a

peace officer has probable cause to believe that a person, either in or outside the presence of the officer, within the previous 12 hours, "committed one of those crimes." Thus, he added, it is a mandatory arrest if the crime has been committed within the previous 12 hours.

Number 0792

MR. D'AMATO said that Section 5 is really the new section of the bill; "this gets us to ... the guts of the stalking bill itself." He reiterated his earlier comments regarding the elements of stalking, the potential constitutional difficulties relating to enjoining someone from certain acts, and the belief that those difficulties have been overcome via language in Version J. He elaborated:

> What we've done here, in [subsection (b)(1) of Section 5], which is line 10 on page 4, is we've allowed - as the domestic violence statute does - for emergency protective orders. We've got amendments that make it more conforming to the domestic violence statute, which I'll refer to later. But what that emergency protective order does is add [subparagraph] (C), which says that, "the petition does not order the respondent to stay away from the respondent's own home, school, business, or place of employment".
>
> This is the crux of how ... Jerry Luckhaupt, in "Leg Legal," feels that he got over the constitutional problem. By not ordering them away from their home, ... school, business, or place of employment before they have a chance to be heard - they have a right, under the constitution, to confront their accusers - this gets them over that. But the police can give a victim of stalking an opportunity to be heard, by a police officer, and to get some sort of reassurance that the process has begun in terms of giving them the protection that they need from these alleged stalkers.

MR. D'AMATO, referring to the temporary protective order established in subsection (b)(2), explained that [subparagraph] (D) stipulates that such an order can be granted if the court finds that "the petition does not order the alleged stalker to stay away from the alleged stalker's own home, school, business, or place of employment unless the alleged stalker has been provided an opportunity to be heard on the petition". He added that this means that a person is only allowed an emergency

protective order; a person is not allowed a temporary or a longer order unless the respondent is found and has the opportunity to at least be heard on the petition. He pointed out that although this does not preclude someone from getting a second emergency protective order, it does not set up the mechanism whereby a temporary protective order automatically goes into place.

Number 0962

MR. D'AMATO, referring to page 4, line 28, explained that [paragraph] (3) sets out an extended protective order. He noted that these, in the domestic violence situation, are called protective orders, that they run for a period of six months, and that [subparagraph (C)] stipulates that "the respondent has been provided at least 10 days' notice of the hearing and of the alleged stalker's right to appear and be heard, either in person or by an attorney." He added:

> Another thing that this does - that this sets out - is that they don't have to necessarily reply: If you are accused of something and you've been served but you decide not to show up, you're not necessarily immediately under the gun to get down there and reply to it. If you agree with it, and do nothing, the protective order can go into place; you've been served, you've been given the notice of your right to be heard, but you do not have to go in.

MR. D'AMATO pointed out, however, that those people who believe that they've been unjustly accused have the right to go in and give their side of the case in order to have the protective order set aside. He remarked that the remainder of the bill is relatively straightforward. Section 6 defines terms, and speaks to the violation of a protection order or protective injunction, which is the only addition [to that section]. Section 7 acknowledges indirect changes to the court rules.

MR. D'AMATO then referred to Amendments 1-5, which were provided by the sponsor and which, he noted, are simply either conforming amendments or act to fill lacunas that [Version J] may have missed. He explained that Amendment 1 simply conforms with language pertaining to domestic violence orders, so as not to confuse practitioners and to show uniformity in the language and prevent judicial confusion regarding legislative intent. Amendment 1 reads [original punctuation provided]:

Page 4, line 17:
Remove:
(2) a temporary

Insert:
(2) an ex-parte

Number 1122

MR. D'AMATO explained that Amendment 2 makes it [explicit] that a respondent has a right to a hearing. Amendment 2 reads [original punctuation provided]:

Page 5, line 5:
Add:
(D) When a petition is filed under this paragraph, the court shall schedule a hearing and provide at least 10 days' notice to the respondent of the hearing and of the respondent's right to appear and be heard, either in person or by any attorney.

MR. D'AMATO explained that Amendment 3 [also conforms language to] the domestic violence statute and is intended to speak to the condition of the emergency protective order. This language will allow the alleged victim of stalking to call the police directly and have them make application for an emergency protective order; it doesn't require the alleged victim to seek out a court when he/she feels threatened. He noted that Amendment 3 also stipulates that an emergency protective order can be granted if it is necessary to protect the petitioner from immediate danger of further stalking. Amendment 3 reads [original punctuation provided]:

Page 4, line 9
Delete:
(b) [AFTER RECEIVING A PETITION UNDER (a) OF THIS SECTION, a] court may grant

Add:
(b) A court may grant

Page 4, line 10
Add:
(1) an emergency protective order if [THE COURT FINDS], upon a sworn oral or written application by a peace officer with the consent of the alleged victim, that

Page 4, line 14:
Add:
(B) the protective order is necessary to protect the petitioner from immediate danger of further stalking

Number 1224

MR. D'AMATO explained that Amendment 4 simply removes language that was found to be redundant, should Amendment 3 be adopted. Amendment 4 reads [original punctuation provided]:

Page 5, line 10:
Remove:
(d) a parent or guardian may file a petetion [sic] fro [sic] a protective order under this section on behalf of a minor. [A PEACE OFFICER MAY MAKE A WRITTEN OR ORAL APPLICATION FOR AN EMERGENCY PROTECTIVE ORDER UNDER THIS SECTION ON BEHALF OF, AND WITH THE CONSENT OF, THE STALKING VICTIM].

MR. D'AMATO explained that Amendment 5 simply conforms the language to that of the domestic violence statute. Amendment 5 reads [original punctuation provided]:

Page 4, line 28
Remove:
(3) [an extended] protective order

Insert:
(3) a protective order

CHAIR ROKEBERG, referring to page 5, subsection (g), of Version J, asked: "What is the violation of ... either the protective order or the injunction?"

MR. D'AMATO explained that if [Version J and Amendments 1-5] are adopted, violation of a domestic violence protective order, a stalking protective order, or a child protective injunction may result in a class A misdemeanor and may be punishable by up to one year of incarceration and up to a $5,000 fine.

REPRESENTATIVE COGHILL indicated that his understanding, then, is that a police officer would either be acting on the court's

behalf or would have to get a court order on the parent's behalf. He said he is trying to figure out what the line of authority would be.

MR. D'AMATO said that according to his understanding, upon being summoned to wherever the victim is located, a police officer can make an application as an agent of the court, through the authority of the court. In this way, the police officer has the authority to write out an emergency protective order while on location. He noted that this is what is done currently with regard to domestic violence protective orders. He explained that the delegation of that authority to a police officer occurs in situations where an officer of the court - a judge or a magistrate - can't be found, but the peace officer feels the need to exercise that sort of discretion.

REPRESENTATIVE COGHILL said he would research whether there have been any challenges to that authority.

CHAIR ROKEBERG indicated that other people have expressed concerns regarding that discretionary authority.

Number 1477

MARY A. WELLS testified via teleconference and relayed her experience as the victim of a stalker:

> This whole situation started in August when I started to receive phone calls, both at home and at work. The stalker -- I did not know who it was, it took probably a couple of months to finally figure it out, by that point the stalker had befriended my children. I had called the police on many occasions to get assistance, and at one point in November ... - I believe it was around November 6 ... - that weekend his activity increased in terms of calling. He was calling almost regularly every hour - every couple [of] hours - both at work and at home. He was very aggressive in communicating with my kids in terms of ... letting us know that he was on his way to my home.
>
> And eventually I went to see the judge, Judge Murphy, and he indicated [that] I could not get a protective order ... because I did not qualify because ... the relation was nonexistent as defined in the laws. ... Eventually he was arrested for illegal use of telephone, as well as stalking, and he was ... given a

> sentence [of] four years and was to be released on good behavior [after] four months, which was yesterday. I believe this law is critical; I've talked to other women who have been stalked; they're afraid to come forward because there's still no system of care for them, if you will. I made a commitment with Judge Murphy during our hearing that I would change the (indisc.) till this thing's settled down.

MS. WELLS said that she has talked to several entities and they all agree that this law has to change so that it applies to everybody and not just to victims of domestic violence. She indicated that she has had help on this issue from Representative Crawford, David D'Amato, Bruce Roberts, and the Anchorage chief of police.

CHAIR ROKEBERG, in response to a question by Representative Meyer, clarified that the misdemeanor charge referred to in HB 317 would be for violating a protective order, whereas in Ms. Wells's case, the person was charged with the crime of stalking.

Number 1722

LAUREE HUGONIN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said the ANDVSA supports HB 317 and thinks it's critical for victims of stalking to have the ability to garner the protection afforded by protective orders. She elaborated:

> We have situations in the state currently where there are employees ... in the same work environment that are being stalked. We have [a] situation where a student was being stalked by teacher. We've had situations where a neighbor has been stalked by another neighbor. So there is, in the state, a need for this kind of statute, to help give them one more level of protection, and provide one more sanction against the stalker if they continue in that behavior.
>
> I think that there may be some discussion over exactly how to craft or frame the language, and what's important to us is that the three kinds of protection be made available. So, we'd certainly be willing to work with people on coming up with language that's acceptable, but we think it's important that they do have that 72-hour window of protection that they can get, then the 20-day, and then the longer - for six

months. And I understand that there is concern with - in a 72-hour order - keeping somebody away from their own home; I think probably if that was the case you'd be looking at a DV protective order.

I do have some concern that we exclude schools, business, or place of employment, because that could be the same school that the victim is attending, or place of employment, or business. And so for that 72 hours, if you can't exclude the stalker from those places, the victim probably isn't going to feel comfortable in going to those places, so they'll miss some school time, they'll miss some work time, and so that's just sort of a consideration to weigh. I think it's probably fair to exclude the home from those 72-hour orders, but I don't know about the other places.

MS. HUGONIN expressed the hope that the committee would move HB 317 from committee expeditiously. In response to questions, she explained that the revised domestic violence statute, which was sponsored by Senator Sean Parnell and which allows for the three types of protective orders, has been in place since 1996; prior to that time there were emergency orders and "regular orders," and those were in place perhaps as far back as the mid-80s. She also explained that prior to 1996, mandatory arrest was the policy for the Anchorage Police Department, the Alaska State Troopers, and other local law enforcement agencies, but it was not in statute until the revised DV statute was enacted.

Number 1919

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that the DOL supports HB 317 and reiterated that there is a need for this sort of protection for victims. She noted that there are children who sometimes are stalked by strangers or acquaintances who don't qualify as "domestic violence cases." She said that the DOL's main concern was that the orders provided for in HB 317 have the same terminology and length as the DV orders so as to prevent confusion, and noted that some of the amendments discussed have just such a conforming effect. In this way, everybody knows what an emergency protective order is, what an ex parte order is, and what a regular protective order is, for purposes of stalking situations.

REPRESENTATIVE COGHILL, referring to an extended order and the preponderance of evidence, asked whether other charges would be ensuing, should someone "get to that level."

MS. CARPENETI said that it depends on the situation. She noted that [HB 317] allows the court to issue a protective order if there is a preponderance of the evidence to show that stalking has occurred; thus, if the state has sufficient evidence to prove the crime of stalking, then she assumes that the person would also be charged with that crime, although that charge would then have to be proven beyond a reasonable doubt.

REPRESENTATIVE COGHILL asked how that compares with the other two levels of protective order.

MS. CARPENETI explained that for the first two levels - an emergency [protective order] and an ex parte [protective order], both of which being much more limited in time - the court would have to find that there is probable cause that stalking has occurred and that the person is in danger of [continued] stalking. By the time the six-month order is issued, she noted, the court has to find "by a preponderance of the evidence." In response to a question, she explained that the highest level of proof that the state has to meet when it's charging someone with a crime is proof beyond a reasonable doubt.

REPRESENTATIVE COGHILL asked what a court case might look like, or what the plea might be, for a person subject to a 20-day protective order if he/she feels that the system has been misused.

Number 2056

MS. CARPENETI pointed out that these aren't crimes, these are not criminal charges; when a victim goes to a court and asks for a protective order, the respondent is not being charged with a crime. So in terms of a plea, she remarked, that is really inapposite in this context; it would only be if the state filed criminal charges for stalking that the defendant would have to enter a plea. She noted, however, that once a court, via a protective order, has ordered an individual to cease stalking a person, if that individual violates that order, then he/she can be charged with violating the protective order and the state would then have to prove the violation beyond a reasonable doubt.

REPRESENTATIVE COGHILL mentioned his concern that the protective orders proposed by HB 317 could perhaps be misused. If someone is subject to an extended protective order and disagrees with "the facts," how could he/she defend against it, he asked.

MS. CARPENETI pointed out that before an extended protective order can be issued, a hearing must first take place; thus the respondent has an opportunity to make arguments in opposition to the order, as well as an additional opportunity to request modification of the order.

REPRESENTATIVE COGHILL asked whether 10 days seems like a reasonable amount of time with regard to the notice of hearing and notice of right to respond.

MS. CARPENETI posited that it is a reasonable amount of time, remarking that it is the same amount of time in which to respond to a petition for a six-month protective order in the DV context, and to her knowledge that has proven adequate.

REPRESENTATIVE JAMES asked what would happen if, after the six months elapses on an extended protective order, the individual begins stalking his/her victim again.

MS. CARPENETI said she assumes that the victim can reapply for an order.

REPRESENTATIVE JAMES expressed concern that the subject of a protective order doesn't have to show up at the hearing; he/she could just disappear, not to be heard from again until the order expires, and then start stalking again. She opined that the respondent should be required to show up at the hearing.

Number 2277

REPRESENTATIVE MEYER asked how hard it is to get a protective order, at what point behavior is considered harassment versus intimidating or threatening, and whether that is up to the judge to decide.

MS. CARPENETI said that in a DV context, a judge has to make the findings that the statute requires: that there is probable cause that this person has committed domestic violence on the victim. So, depending on what type of protective order is sought, the judge has to make various findings based on evidentiary standards that are set forth in the statute. For an emergency [protective] order, for example, it generally requires

that a police officer call a court system employee - a judge or a magistrate - and, under oath, describe the situation, and then if the court makes a finding that there is probable cause that the person has been a victim of stalking and that he/she is in danger of further stalking, then that 72-hour emergency order can be issued.

REPRESENTATIVE MEYER commented that this seems like [the determination] would be pretty subjective, although he acknowledged that judges have to work with subjective evidence all the time.

MS. CARPENETI pointed out that that is their job: judges evaluate the evidence and make a determination, regardless of how difficult doing so is.

REPRESENTATIVE COGHILL expressed concern about extending the authority of the police to issue protective orders. Excessive police power should be guarded against, he opined.

MS. CARPENETI explained that the police officer has to call a judge or magistrate and testify under oath, either orally or in writing; the police officer does not just issue a protective order, not even an emergency order. The protective order has to come from a judicial officer.

REPRESENTATIVE JAMES indicated that she still has concerns regarding the hearing process; she would prefer that attendance by the subject be mandatory. Then, if the person makes a statement admitting to the stalking, he/she should be charged, rather than just being subject to the protective order. She said it seems to her that there is a loophole and someone could get seriously injured because of it.

MS. CARPENETI offered that when a victim requests a protective order, he/she could also investigate the possibility of pressing criminal charges, which would mandate that the perpetrator show up in court.

REPRESENTATIVE JAMES, notwithstanding the possibility of pressing criminal charges, indicated that even just the idea of being stalked is very frightening, and that she would like some assurance that more is being done to protect victims of stalking, such as mandating a court appearance, which would also ensure that the protective order was issued to the correct person.

[Recording of 02-28, Side B, was defective; see Tape 02-28A.]

TAPE 02-28A, SIDE A
Number 0001

REPRESENTATIVE JAMES continued: "It just seems to me like if you've got far enough along to ask for a protective order, you ought to have enough evidence to bring that person in to respond."

MS. CARPENETI replied, however, that there is a different standard of proof [involved]. She also noted that because the respondent is served with the protective order by a law enforcement officer, it eliminates the likelihood of a protective order being issued to the wrong person, since the respondent can make that known right away.

REPRESENTATIVE JAMES said she would feel more comfortable if, "at that stage of the game," the respondent received more than just a protective order, if he/she received a more thorough review.

MS. CARPENETI assured Representative James that in most cases, the civil proceeding [pertaining to the protective order] and the criminal proceeding would go hand in hand.

REPRESENTATIVE COGHILL indicated that he would support HB 317. He asked what would happen if the order can't be delivered to the respondent because he/she can't be accurately identified. At what point does the "legal force engage to try to find out the identity" of a stalker?

MS. CARPENETI acknowledged that that is a difficult question. She said she assumes that if a person is afraid of an individual to the point of contacting the police, then, in most cases, he/she will be able to direct the police to the correct individual, or at least give enough information to the police so that they can find out who this person is.

REPRESENTATIVE COGHILL remarked that because the protective order or injunction has to be delivered to a specific person, it could be problematic if the identity of the stalker is unknown.

CHAIR ROKEBERG asked whether domestic violence protective orders would be applicable in situations where there used to be a relationship between the stalker and the victim.

MS. CARPENETI indicated that the protective orders pertaining to domestic violence situations would apply because AS 18.66.990 is applicable in situations where adults or minors have lived or are living together, or have dated or are dating each other. She noted that the protective orders proposed by HB 317 would apply when the victim does not know the stalker or is merely an acquaintance such as a coworker, neighbor, or schoolmate.

CHAIR ROKEBERG asked whether a protective order could be issued to somebody whose name is not known; for example, could a "John Doe or a Jane Doe protective order" be issued?

MS. CARPENETI said she would research that issue.

BRUCE R. ROBERTS, Deputy Municipal Attorney, Criminal Division, Department of Law, Municipality of Anchorage, noted that while working in the sexual assault/domestic violence unit he was solely responsible for all "charging and investigations of stalking cases," and that he helped the Anchorage Police Department formulate its protocol regarding how to investigate stalking cases. He mentioned that he has presented a number of stalking cases to the grand jury and has investigated a number of both misdemeanor and felony stalking cases. He concurred with Ms. Carpeneti that when there is a relationship between victim and stalker, it fits into the DV context.

MR. ROBERTS noted that "threatening behavior on a continuous basis" qualifies as stalking, and that stalking is not an easy case to prove. He elaborated:

> Stalking is not an easy case to prove when the prosecution has the burden of going forward or presenting the matter beyond a reasonable doubt. And [HB 317] makes it a little easier to get started on that and to afford a layer of protection before the stalking behavior gets out of line - out of hand - and does considerable harm, in terms of emotional harm, to the victim of that stalking. They've frequently asked me - and I'm sure that you've heard this before - "What does he have to do? Does he have to kill me?" He has to commit a crime, and before we had the stalking law, he had to ... actually be caught committing a crime.
>
> The stalking law says that if a person engages in repeated - and repeated is defined as more than one - ... conduct which is nonconsensual, and places the

person in fear of physical injury or death or fear of physical injury or death to a family member, ... they can be charged with stalking. I don't think we ever, unless it was an imminently dangerous situation, ... charged anyone with committing merely two acts - or more than one act and less than three - ... that would place that person in fear. You need to corroborate that evidence, you need to develop the evidence; we have run wires. Notes can be left, e-mails can be sent; you have to trace the calls, you might have to set up a phone [tap]. There are a lot of things that go into a stalking investigation.

MR. ROBERTS said:

To answer one person's concern, there is more that's being done. In Ms. Wells's case, she reported a single incident to the police and the police advised her that they couldn't do anything. Well, they probably could have - if they understood the facts correctly - opened up a stalking investigation. A stalking investigation should be referred to an investigator, it should be treated as [a] potential felony, [and] it may be handled by the patrol officer who takes an interest in it, recognizing the seriousness that it presents. But ... patrol officers have stacked calls, they ... work in shifts, and they may not be able to give the attention to these matters that they should. They may pass it on to the next shift and, depending on the demands of the next shift, the thing will be followed up or it won't be followed up.

A stalking case should be referred to either the district attorney's office or the city prosecutor's office ... so that we can coordinate the investigation. And that's what happened in Ms. Wells's case as well; she contacted one of our assistant municipal prosecutors, who said that she should go down to try to get the restraining order. We advised her that she probably wouldn't qualify because she wasn't related to this man - she ... never lived with him - and, ... even though he was familiar, she was not going to qualify for a restraining order. We felt it inappropriate that she would not be able to avail herself of any protection until something more serious happened, or [that] she had to wait until

repeated acts of nonconsensual conduct occurred, placing her and her family in fear of injury or death. And it eventually got up to that, but it took some time for us to develop our stalking case and our illegal use of telephone [case].

[End of Tape 02-28A; no testimony is missing.]

TAPE 02-29, SIDE A
Number 0001

MR. ROBERTS continued:

But had she been able to go to the court as a non-family member and say, "This is what's going on," and allow the court to establish by probable cause - not by a preponderance and not even by "beyond a reasonable doubt" - that this woman was the victim of stalking, they could have issued a judicial order, which then kicks in the protections that the state statute - violating a restraining order - affords. It also is an enforcement tool in that if you commit acts of stalking in violation of a restraining order, you have committed a felony and not a misdemeanor; so that's an added law-enforcement tool. The ability [to get an order] for someone who is not ... a household member or formerly related or [who has not] had a relationship with the [stalker] gives them an additional layer of protection before, or while, an investigation into the underlying conduct is going on with either the DA's [district attorney's] office or the city prosecutor.

I do know, also, that a six-month order may be extended, and I think it's either 45 or up to 90 days, if the petitioner applies for an extension of the six-month order. And notice or service of process to the respondent, from APD's [Anchorage Police Department's] practice ..., entails reading the notice and every provision that is applicable, as well as handing or giving a copy to the respondent. So ... there's no question in their mind, after they've been served - found by a warrant service or any APD officer and then given the notice - ... what they're prohibited from doing, as well as the next time that they are supposed to appear. I don't think, however, it's reasonable to expect that they be required [to go to court], or that

law enforcement be required to haul them into court; it's a right to due process that they can either exercise or waive.

Number 0200

REPRESENTATIVE JAMES, referring to the release of the stalker in the Wells case, asked what could be done to give Ms. Wells assurance that the stalker will not simply begin terrorizing her and her family again after serving four years.

MR. ROBERTS clarified that the defendant in the Wells case was charged with two misdemeanor offenses under the municipal code. The first offense was stalking, which is the equivalent of a class A misdemeanor: $5,000 or a year in jail. The illegal use of telephone, which carries a six-month maximum term or a $1,000 fine, was the other offense. For both of those counts, he was given 360 days imposed with 180 days suspended; with "good time," he was released in four months. He has been placed on informal probation for five years with the order not to commit any new "jailable" offenses and not to have any contact, directly or indirectly, with the victim or her family members. So the defendant did not go to jail for four years; rather, he has served just four months of actual time.

MR. ROBERTS noted that if this had been a felony case and the person had an extensive record, he could have potentially gotten up to five years under felony stalking, which is a class C felony. Currently, Ms. Wells only has a piece of paper protecting her, and that's an order of judgment that requires that this defendant not have any contact with her for five years or face an additional year in jail. "That's the best we could do on a 'misdemeanor venue,'" he added.

CHAIR ROKEBERG noted that Mr. Roberts used the term "restraining order" instead of "protective order" as is used in HB 317. He asked whether the terms mean different things

MR. ROBERTS indicated that there is no difference and he simply misspoke and should have said "protective order" instead. He elaborated:

> It's an injunction of some sort, ... a restraining order restrains somebody from some conduct ...; the protective order does the same thing, has the same force and effect; the judgment has the same force and effect when it says that the defendant in that case

may not contact, directly or indirectly, Ms. Wells or her family.

Number 0483

MR. ROBERTS next referred to Section 5(a)(2), page 4, line 6, and noted that it says, "refrain from contacting, intimidating, threatening, or otherwise interfering with the petitioner or a family member of the petitioner specifically named by the court." He explained that [his office] frequently, such as in its [protective] orders, indicates that a person may not contact someone "directly or indirectly." This is to prevent someone from contacting a family member, a friend, or other acquaintance, knowing full well that that act is way to let the victim know that "they can still get to them." He surmised that the term "or otherwise interfering with the petitioner" might have the same effect, but suggested that the committee consider adding the term "directly or indirectly" after "contact".

REPRESENTATIVE MEYER asked whether e-mail would be considered a form of contact.

MR. ROBERTS said yes, and noted that last year, one of Anchorage's ordinances had been changed to include "electronic communications." Certainly an electronic communication would be a form of direct or indirect contact. He added, however, that the origin of such a communication would have to identified and traced back to the defendant.

REPRESENTATIVE MEYER asked whether the defendant in Ms. Wells's case was charged under local ordinances or under state statutes.

MR. ROBERTS clarified that local ordinances were used. "After the state created the stalking statutes - both misdemeanor and felony - the municipality got on board and created one themselves; however, ours is only a misdemeanor offense," he explained. He noted that the municipality's "illegal use of telephone" ordinance provides more specific language than the state statute with regard to what conduct is prohibited, and "has a little more teeth to it" in terms of the penalty.

CHAIR ROKEBERG indicated that HB 317 would be held over for the purpose of developing a committee substitute (CS) that incorporates the amendments discussed.

ADJOURNMENT

Number 0854

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:22 p.m.