

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 7, 2003

1:02 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative John Coghill
Representative Jim Holm
Representative Max Gruenberg

MEMBERS ABSENT

Representative Ralph Samuels
Representative Les Gara

COMMITTEE CALENDAR

HOUSE BILL NO. 12

"An Act relating to harassment."

- MOVED CSHB 12(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 1

"An Act relating to stalking and to violating a protective order; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

- MOVED CSHB 1(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 12

SHORT TITLE:HARASSMENT BY ELECTRONIC COMMUNICATION

SPONSOR(S): REPRESENTATIVE(S)MEYER

Jrn-Date	Jrn-Page		Action
01/21/03	0033	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0033	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0033	(H)	JUD
02/03/03	0119	(H)	COSPONSOR(S): WHITAKER
02/07/03	0153	(H)	COSPONSOR(S): ANDERSON, CHENAULT
02/07/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 1

SHORT TITLE: STALKING & PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) CRAWFORD

Jrn-Date	Jrn-Page		Action
01/21/03	0030	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0030	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0030	(H)	JUD, FIN
01/21/03	0030	(H)	REFERRED TO JUD
01/29/03	0088	(H)	COSPONSOR(S): MCGUIRE
02/07/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 12.

LEO BRANDLEN, President

Board of Directors

Alaska Peace Officers Association (APOA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 12.

RICHARD RHEA, Anchorage Police Department (APD),

Municipality of Anchorage (MOA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 12.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section-Juneau

Criminal Division

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 12 and responded to questions.

REPRESENTATIVE HARRY CRAWFORD

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 1.

MARCI SCHMIDT

Wasilla, Alaska

POSITION STATEMENT: During discussion of HB 1, recounted a personal experience and urged passage of HB 1.

MARY WELLS

Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 1, recounted a personal experience and suggested that the bill will help other victims of stalking.

BRUCE R. ROBERTS, Deputy Municipal Attorney

Criminal Division

Department of Law

Municipality of Anchorage (MOA)

Anchorage, Alaska

POSITION STATEMENT: Responded to questions and provided comments during discussion of HB 1.

THERESA WILLIAMS, President

Pissed Off Parents (POP)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 1.

DOUG WOOLIVER, Administrative Attorney

Administrative Staff

Office of the Administrative Director

Alaska Court System (ACS)

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 1.

LAUREE HUGONIN, Executive Director

Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)

Juneau, Alaska

POSITION STATEMENT: Provided comments in support of HB 1 and responded to questions.

ACTION NARRATIVE

TAPE 03-4, SIDE A

Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:02 p.m. Representatives McGuire, Anderson, Holm, Coghill, and Gruenberg were present at the call to order. Chair McGuire noted that Representatives Gara and Samuels have been excused.

HB 12 - HARASSMENT BY ELECTRONIC COMMUNICATION

Number 0044

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 12, "An Act relating to harassment."

Number 0063

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 12, version 23-LS0050\D, Luckhaupt, 1/22/03, as the work draft. There being no objection, Version D was before the committee.

Number 0089

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, explained that Version D changes the title of HB 12 so that it now reads:

"An act relating to the crime of harassment committed by use of electronic communication."

REPRESENTATIVE MEYER went on to say that HB 12 merely adds "electronic communication" to the list detailing what constitutes the crime of harassment. Current statute does not provide law enforcement with the necessary tools with which to pursue people who harass others via electronic communications. Harassment via electronic communication, he remarked, has become an inexpensive and attractive method of harassment for many who are unwilling to face, either in person or over the phone, those they are harassing. He also remarked that in addition to being a serious crime on its own, harassing others is often a prelude to more serious crimes. He opined that HB 12 will create an important tool for law enforcement officers as they pursue perpetrators who use electronic communications to harass others. Representative Meyer urged members to support HB 12.

REPRESENTATIVE GRUENBERG noted that he has a proposed amendment that will, on line 12, after "or", add "obscene", and provide for some grammatical adjustments.

REPRESENTATIVE MEYER said that he supports such an amendment.

Number 0381

LEO BRANDLEN, President, Board of Directors, Alaska Peace Officers Association (APOA), said simply that the APOA has sent a letter of support to the committee, and is in support of both HB 12 and the suggested amendment. He observed that HB 12 will cover both e-mails and "text messaging."

Number 0495

RICHARD RHEA, Anchorage Police Department (APD), Municipality of Anchorage (MOA), said simply that he supports HB 12.

REPRESENTATIVE GRUENBERG noted that the committee has received Mr. Rhea's letter.

Number 0543

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), remarked that the DOL supports HB 12. She suggested that the proposed amendment be altered such that, after "call" on line 12, insert ", obscene electronic communication,". She also remarked that most of the e-mail communications in question are anonymous.

REPRESENTATIVE GRUENBERG expressed a willingness to consider that language in place of his original suggestion.

REPRESENTATIVE ANDERSON, after reading the language in current statute, the language in Version D, and the language in the DOL's suggested language change, asked whether the intent of that suggested language is to separate "obscene electronic communication" from "anonymous".

[Ms. Carpeneti nodded yes.]

REPRESENTATIVE ANDERSON referred to page 10 of a handout provided to the committee titled "1999 Report on Cyberstalking: A New Challenge for Law Enforcement and Industry." He said that according to the second paragraph on page 10 under the heading "Law enforcement response: the challenge of anonymity," one form of anonymous service is established via a false electronic mailbox. From that same paragraph on page 10 he then read, "The second form comprises mail servers that purposefully strip identifying information and transport headers from electronic mail." He relayed that the report goes on to talk about "remailers," in which "you go from one account to another account to another account, and then you can't trace it." He

asked whether the suggested language would restrict HB 12 from applying to anonymous e-mails such as remailers.

MS. CARPENETI offered her belief that the suggested amendment would preclude HB 12 from applying to anonymous e-mails. "The amendment would only make it harassment under a (a)(4) to send electronic communications that are ... obscene or ... that threaten physical injury," she added.

REPRESENTATIVE MEYER indicated that he agreed with the intent of the suggested amendment. He mentioned that the Anchorage Assembly has already "passed" similar language.

MS. CARPENETI, in response to further questions regarding the intent of the legislation and the suggested amendment, explained that with anonymous e-mails, it would be difficult to find and prove, beyond a reasonable doubt, that the author intends to harass the recipient.

Number 1012

REPRESENTATIVE GRUENBERG mentioned a recent U.S. Supreme Court case that said there is a constitutional right for anonymous editorials, and that the right of free speech - and in that case free press as an adjunct - implies and carries with it the right to do so anonymously. The key thing [with HB 12], he noted, "is that you have the criminal intent." From a strictly constitutional point of view, he said, he is glad that law enforcement does not pursue authors of anonymous e-mails simply because the e-mails annoy somebody; for example, political statements can be annoying to some people.

REPRESENTATIVE ANDERSON referred to page 6 of the aforementioned report and noted that under the heading "Actual Cyberstalking Incidents," it mentions the use of Internet chat rooms and online bulletin boards in stalking incidents. He pointed out that under this same heading there is also mention of a prosecutor in Massachusetts charging a man who utilized anonymous remailers to systematically harass a co-worker. So this does occur and there is prosecution for it, he remarked.

MS. CARPENETI remarked that Alaska statutes already prohibit stalking, and ventured that such examples as listed in the report might qualify as stalking itself. She said that she would research that issue further. Harassment, she pointed out, is a class B misdemeanor. In response to further comments, she

mentioned that statutes addressing cybercrimes have recently been enacted.

REPRESENTATIVE ANDERSON raised the issue of defining the term "electronic communication". He noted that it is not currently defined in either the bill or Title 11. He recommended that the committee draft a letter of intent that clarifies what the committee views as an "electronic communication".

REPRESENTATIVE MEYER remarked that he would welcome a letter of intent.

Number 1304

CHAIR McGUIRE noted that currently, "electronic communication" is defined in Title 42; she opined, however, that this definition is too broad and doesn't really apply to the issue at hand. She remarked that simply creating a letter of intent is fine with her.

REPRESENTATIVE GRUENBERG suggested that because law enforcement officials, the court system, and the general public won't necessarily be aware that there is a letter of intent stipulating exactly what is meant by the term "electronic communication, it would be better to define the term within the [proposed] statute itself. By doing so, he posited, the committee will be assured that all parties will define the term as intended.

REPRESENTATIVE HOLM suggested that any definition created now may quickly become obsolete and not inclusive enough, and might thus require constant alterations.

CHAIR McGUIRE, on that point, said that rather than having a narrow definition in the statute, she would prefer to have a letter of intent that contains a "living" definition of "electronic communication" such that it would be as inclusive as possible while still allowing for technological advances.

REPRESENTATIVE GRUENBERG suggested, then, that the committee ought to consider the suggested amendment, pass the bill out of committee, and have staff spend the next few days creating the letter of intent so that it can then be included in the bill packet as it continues through the process.

Number 1566

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 1 [original punctuation provided; current line numbers pertain to the original bill and may need to be changed to fit Version D]:

Page 1, lines 11 - 13:

Delete all material and insert:

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

CHAIR McGUIRE asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 1583

CHAIR McGUIRE then directed members of staff to form "a subcommittee of intent," the duty of which shall be to create the letter of intent, which can then be added to the bill packet in time to go to the House floor.

Number 1606

REPRESENTATIVE GRUENBERG moved to report the proposed CS for HB 12, version 23-LS0050\D, Luckhaupt, 1/22/03, as amended, out of committee with individual recommendations, the accompanying fiscal notes, [and the forthcoming letter of intent]. There being no objection, CSHB 12(JUD) was reported from the House Judiciary Standing Committee.

HB 1 - STALKING & PROTECTIVE ORDERS

Number 1623

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 1, "An Act relating to stalking and to violating a protective order; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

Number 1648

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor, said that HB 1 repairs an omission in the statutes pertaining to stalking. Currently, stalking is only a crime in Alaska if the victim knows the stalker. He surmised that the omission probably occurred because the stalking statutes were

originally developed to fit the domestic violence statutes. He said that although there are not a large number of people who would benefit from HB 1, every year there are people who are being stalked by strangers, and he opined that they need the same protection as those who are stalked by someone they know. He referred to HB 1 as a technical change that allows the use of protective orders in instances when a person is being stalked by someone unknown.

CHAIR MCGUIRE noted that this legislation passed the House unanimously in the 22nd legislature and had a lot support as it moved through the Senate.

Number 1743

MARCI SCHMIDT relayed that her minor son was assaulted last July by another minor and that minor's older sister, and then, over the course of the next few months, they proceeded to stalk her son and terrorize him at his place of employment. She said that when she went to the courthouse to get a restraining order, she was unable to get one [because of the stipulation that a victim must have a relationship with his/her stalker]. She indicated that she still desperately needs that restraining order, and urged the passage of HB 1 so that it will be easier for victims to find legal remedies to the problem of being stalked by those unknown to them.

Number 1829

MARY WELLS recounted her personal experience. She said:

I was a stalked victim, including my entire family. ... In August of 1991, a man began calling my home and work using different names. The statements he made were inappropriate and sexual in nature. He then focused his attention directly at my children who were ages 5 and 12. At first he befriended them over the phone, and by the time my children told me about it, first thing I did was just put a halt to them answering the phone. And next thing you know, he's leaving messages. By October, the phone calls and messages left on my answering machine increased up to 15 times a day - at work and at home. He would call at all hours of night: 11 o'clock [p.m.], 1, 2, 3, 4 in the morning. His statements to my children were all alarming, frightening, and X-rated. By then, my 5-year-old became incontinent every time the phone

rang. For two months my boys, again ages 5 and 12, stayed anywhere from 6 to 12 inches in distance away from mom and dad, the school teachers, and all of the adults that I trusted.

I [had] called the police numerous time for assistance, and the best they could do was take the report. It wasn't until ... mid-October [that] I truly [discovered] who this guy was, because I didn't know who I was dealing with. By the first week of November, we noticed a significant change in his behavior, tone, and actions. He stated he was on his way, he was coming, he had a present that would hurt my boys, and, of course, that was enough to make mom go a little bit crazy. On the day that he did mention my boys in relation to pain, I lost all fear and started to prepare ... [for] what I needed to do to protect my kids and to create some kind of a buffer without the help of the law. [I had] my faith in God - or our faith in God, my sword - my friends, the police, and the law. And I went to court to obtain a protective order.

On November 6th, Judge Murphy said to me that he had to ... deny our protective order because the law didn't apply to us. He clearly stated the law, and then explained it in a layman's terms. Basically, we had no recourse because, one, we were not members of his family ..., we've never lived with him, currently [are] not living with him or under the same roof, ... never dated this guy or have ever dated him, or ever had a sexual relationship. And that's where there's a loophole in the law. Further, Judge Murphy indicated that the law needed to be changed. On that particular day, ... he told me of a mother, ... with ... a child, who sat in the very same seat on a very similar situation almost exactly one year to the day I was in court, who had a stalking situation and [was] shot shortly after the courthouse meeting. And it's just another case of ... a stranger.

Number 1980

MS. WELLS continued:

But I am here today, as a citizen, to represent so many voices from all over Alaska who are living in

fear of their stalker, like myself; at the time of crises, I didn't know what it was that attracted him to my family, and of course to a 5-year-old and a 12-year-old. There are lots of people out there in our communities that are living in fear, and they don't know [why] the stalker has an interest in who it is that they're stalking ... - it could be the blond hair, it could be the 10-year-old innocence, the length of the fingernails - God only knows. But since that happened to me, I have learned so much; I have learned that stalkers often choose their victims who are in public: someone who's shopping; [or] giving a presentation; [or] standing in line in a theater, in a restaurant, [or] at a bus stop; or just picking up their kids at a daycare center.

Stalkers carefully choose their victims. Currently, I know of a woman ...[whose] son was murdered a year and a half ago; ... a member of the family is currently stalking her to keep her from testifying in a grand jury. She's already lost a child and she's not afraid - no more different than I am, but I put my stalker away, so I'm not as afraid. The other victims are very, very much afraid. I have been in nonprofit health and human services nearly all of my adult life, and if it wasn't for the exposure of working at Bean's (ph) Cafe, the homeless (indisc), United Way, and all of the other direct service agencies, and the dear, wonderful people that embraced my family during this crisis, I would not have known what to do. And I wouldn't have known what process I needed to go through to be here today and also last year.

Number 2042

MS. WELLS concluded:

And I thank the police officers, the prosecuting office, and all of those great people that did an impeccable job in helping me put my stalker away. But for many Alaskans who may not have the same support system that I do, God only knows what they will do in order to protect themselves and their family members. We as a voice, although it's just my voice because a lot of them are still afraid, we are asking you to pass House Bill 1 so it includes all stalking victims, not just the adults but also the little people, and

especially those that just don't have those prior relationships. So, thank you for allowing me the opportunity to be here, and [I] hope that [HB 1] will pass smoothly; [it is] a bill that can prevent unnecessary potential deaths and [save] potential lives of many Alaskans.

REPRESENTATIVE HOLM asked Ms. Wells whether she ever pursued harassment [charges].

MS. WELLS said that the prosecutor's office did consider that option among several others.

Number 2164

BRUCE R. ROBERTS, Deputy Municipal Attorney, Criminal Division, Department of Law, Municipality of Anchorage (MOA), relayed that the MOA does not have a municipal harassment statute; instead, the MOA had to charge Ms. Wells's stalker with "illegal use of telephone," which is a violation of Anchorage Municipal Code (AMC) 8.10.090, and a misdemeanor stalking charge. He noted that there are some similarities between the state's harassment statute - AS 11.61.120 - and the MOA's disorderly conduct charge. He mentioned that the MOA is in the process of reviewing and amending AMC 8.10.090, which currently reads:

A. It is unlawful for any person to telephone or electronically communicate with another person with the intent to harass that person or that person's family.

B. It is prima facie evidence of intent to harass that the caller

1. Made repeated telephone calls or electronic communications, having been told such calls were unwelcome; or

2. Called or communicated anonymously; or

3. Used profane or patently abusive language; or

4. Threatened the receiver or the receiver's family.

MR. ROBERTS mentioned that when the Anchorage Police Department (APD) investigates a crime, if the circumstances do not fit

specifically within an Alaska Statute, the matter is pursued through the city prosecutor. He surmised that this may be one of the reasons that a harassment charge was not pursued. If, on the other hand, a crime fits within an Alaska Statute, the APD refers the case to the state district attorney's office. He said that he did not know whether the district attorney's office was ever involved in Ms. Wells's case.

MS. WELLS relayed that the district attorney's office was contacted, but referred her case back to the municipal attorney. She added that "it fell under the category of domestic violence."

REPRESENTATIVE HOLM, speaking to Mr. Roberts, said:

As a prosecuting attorney, is it not your place to find solutions for people who've been wronged? ... I'm perplexed a little bit that the process broke down and didn't offer [Ms. Wells] an alternative, when, in fact, in the law, we do have alternatives.

MR. ROBERTS replied that Ms. Wells was offered an alternative. "We used the tools that we had available, and that was to file a misdemeanor stalking charge and the illegal use of telephone [charge]," he explained, adding that the case was handled expeditiously - a warrant was sought, and the suspect was arrested in short order.

TAPE 03-4, SIDE B

Number 2376

MR. ROBERTS pointed out that the solution that was chosen by the municipal prosecutor in that case was to have the man charged and stop the conduct. He relayed that, oftentimes, they do not have the tools to do that. After noting that he has worked in the criminal justice system for over 20 years, he said that on a number of occasions, he would hear from victims - complainants - the legitimate question of, "What do I have to do, do I have to be killed before I can do something?" The problem that arose in Ms. Wells's case is that she did not have a relationship with the stalker; thus she could not avail herself of an emergency protective order issued by the court. He surmised that in the future, that type of problem would be alleviated if HB 1 were to become law; persons with a legitimate claim will be able to avail themselves of the expedited process that the court currently provides for domestic violence situations. He mentioned that currently, the only recourse for someone in Ms.

Wells's position is to report the violation to the police, who will then take a report and respond in person. He surmised that in Ms. Wells's case, she was probably told to seek a restraining order so that the process could get started.

MR. ROBERTS went on to say:

If we don't have the tools, which are the criminal laws, to provide a solution to people, we have to send them elsewhere. ... If it's not a criminal wrong, then it's a civil wrong, and, in fact, if you want a restraining order against someone, you can petition the court for a temporary or permanent injunction against that person contacting you or ... coming on your land or property ..., but that's a longer process; that's, to date, ... the only way that someone who is not a family member or household member can go to get some emergency relief if some other crime has not been committed.

Number 2244

Something you should also know is that an officer cannot make an immediate arrest for ... a misdemeanor offense not committed in their presence; ... they have to observe it. Otherwise, they would have the private party make a citizen's arrest and sign ... over a request asking the police to act on their behalf. That's a little cumbersome process. It's not required in domestic violence cases. It's not required in the prosecution or investigation of a DUI [driving under the influence], so those officers may make arrests and take immediate action with probable cause.

MR. ROBERTS concluded:

Stalking cases take a long time to investigate, and if they're investigated properly and carefully, ... you can have a successful prosecution. Part of the investigation is determining whether it's misdemeanor conduct or whether it's felony conduct. And there are a number of things that make a stalking a felony, one of which is if it's in violation of a protective order. ... Again, ... that focuses on the people who have had a relationship or they're in one or have been in one. There's either familial stalking or stranger stalking. In this case it was a stranger stalking;

their association was only professional, through work.
... I wanted to just mention that the [MOA] supported
the legislation ... last year

Number 2151

THERESA WILLIAMS, President, Pissed Off Parents (POP), said that [members of] POP support HB 1 because they feel it will directly affect their children, specifically their teenagers. She elaborated by noting that sometimes high school students or junior high school students stalk another student because they mistake that action for love. She relayed that she doesn't see any reason why she should not be able protect her daughter by getting a restraining order on some boy who tries to follow her daughter everywhere she goes because he has decided to make her the object of his affection.

Number 2100

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), referred to the ACS's indeterminate fiscal note, and explained that although the ACS thinks that HB 1 will have some sort of an impact, that impact might not be a significant one. He noted that HB 1 is similar in many respects to the domestic-violence protective-order bill that passed the legislature in 1996; he pointed out, however, that that bill wound up impacting the ACS far more than was anticipated. On the other hand, he added, HB 1 is much more narrowly drawn in that it applies only to the crime of stalking and only to a small subset of victims of the crime of stalking, those who do not already have some sort of domestic relationship with the stalker. People who are being stalked by someone with whom they do have some sort of domestic relationship can already get a regular protective order.

MR. WOOLIVER said that one of the reasons the ACS is uncertain how much of an impact HB 1 will have is that it is still not known just how much stalking occurs outside of a domestic violence context. Another reason is that the boundaries of the crime of stalking itself are not yet clearly drawn; notwithstanding the 1996 [Alaska] Court of Appeals decision in [Peterson v. State of Alaska], in which the constitutionality of the stalking statute was upheld, the crime of stalking itself is not clearly defined. One area of concern that the ACS has, he remarked, is that occasionally bills which are passed for a specific reason end up being used for reasons other than what

was anticipated at the time of passage, thus creating inadvertent consequences. He assured the committee that he did not want to overstate the ACS's concerns, adding that it is only against the backdrop of having significantly underestimated the last piece of legislation related to protective orders that he has raised these issues and attached the indeterminate fiscal note.

Number 1870

LAUREE HUGONIN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said the ANDVSA continues to support the efforts of Representative Crawford and others to create protective orders for victims that are not victims of domestic violence. She went on to say:

Stalking is a very serious crime. It's pretty easy to know when it's happening; it's more difficult to prove ..., by a clear and convincing standard, to get into the criminal courts. We believe that the preponderance of the evidence standard is a fair standard. It will allow a civil remedy for victims; it will give them some way to gain some level of approximate justice that, ... even now, they're not able to obtain. It informs the stalker that his or her behavior is unacceptable; it puts them on notice that what they're doing is not something that the community will tolerate.

We've had examples of teachers stalking students, we've had examples of business partners stalking, [and] we've had examples of people in some service organization - whether it's a postal clerk or a grocery attendant who sees and fixates on somebody who maybe is a neighbor down the street or somebody who just comes into their business. There's also a particular concern for us in that we have batterers who will follow advocates home, or try to find out where their home is - they follow them from the shelters. And there's no relief for any of these kinds of situations.

We think it's important to contain all three elements: [the] different kinds of protective orders. Emergency protective orders are primarily used at night or on weekends, when many courts around the state are not open; I understand that's different in Anchorage, but

that's not the case in most other areas of the state. And we're hopeful -- I understand there may be an amendment forthcoming today, to place the protective orders in the regular central registry of protective orders. This will allow law enforcement across the state to be aware of protective orders, whether or not they were entered in the community where the law enforcement [officer] has been called to the incident. We very much support that element being added into the bill.

Number 1759

REPRESENTATIVE GRUENBERG remarked that when first looking at HB 1, he had originally thought that another approach would be to simply extend the domestic violence statute to cover these kinds of situations, though he was not sure how easy that would have been, since the domestic violence chapter contains other elements. He said that he would like to see the protections encompassed in the domestic violence statute extended to "these people" as much as possible. He remarked that sometimes in order to get legislation passed, it is necessary to raise public awareness of a problem. He surmised that perhaps one of the reasons victims don't just rely on the criminal system is because that system is so overburdened, adding that [HB 1] allows people to go in [pro se] and get these orders civilly by filling out a form and having a hearing and getting in front of a judge and then getting some immediate relief. And it's cheaper, it's simpler, it's quicker, and it's very effective, he remarked.

REPRESENTATIVE HOLM asked whether violating a protective order is a felony.

REPRESENTATIVE GRUENBERG explained that such a violation would only constitute a class A misdemeanor, and pointed out that at the top of page 5 of HB 1 - in proposed AS 18.65.865(b) - the language pertaining to what a protective order form must include clearly states that the following warning be printed in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to \$5,000".

REPRESENTATIVE HOLM asked whether simply owning a gun would violate a protective order.

REPRESENTATIVE GRUENBERG explained that if a domestic violence protective order specifically prohibits a person from owning a

gun, then, yes, that would be a violation of that particular protective order and perhaps "the federal firearms law" as well. He observed, however, that the provisions in the domestic violence protective order statutes which pertained to firearms were not carried over to the stalking protective order provisions of HB 1.

Number 1540

REPRESENTATIVE GRUENBERG, referring to the language in a portion of the domestic violence protective order statute - specifically AS 18.66.100(c)(1) - asked why the term "harassment" was not specifically included in HB 1 as one of the prohibited behaviors. He pointed out that in Ms. Wells's case, the stalker repeatedly harassed her and her children.

MS. HUGONIN said that according to her recollection, they had limited HB 1 to stalking in order to keep the scope of the bill narrow and increase its chances of passing. She pointed out that on the petition for a protective order, incidents of harassment can be included, thus allowing the judge to consider that behavior when reviewing the petition.

REPRESENTATIVE COGHILL mentioned that including "harassment" might have required a different standard of proof.

REPRESENTATIVE GRUENBERG, referred to page 2, lines [27-29], and asked why, on the protective order, individuals in the household other than the petitioner must be specifically named by the court, as opposed to simply allowing the judge to say, "other members of the same household living in the house."

MS. HUGONIN offered that perhaps it is because that language merely reflects the common practice for existing types of protective orders, adding that [petitioners] felt more comfortable with the judge actually writing down the names.

REPRESENTATIVE GRUENBERG, referring to AS 18.66.100(c)(5), asked whether any thought has been given to adding language prohibiting a stalker from following a propelled vehicle [in the possession of or occupied by the petitioner].

REPRESENTATIVE COGHILL posited that such a stipulation could be specified in the [protective] order.

REPRESENTATIVE GRUENBERG pointed out, however, that the language on page 2, beginning on line 24, specifies what the protective

order "may" include. He opined that use of the term "may" makes the list exclusive, and surmised, therefore, that unless something is specifically included in that list, it cannot be stipulated in a protective order.

Number 1151

CHAIR McGUIRE suggested that language on page 2, lines 27-29, could be interpreted broadly enough to address that issue.

REPRESENTATIVE GRUENBERG noted, however, that that language refers to types of communication; thus, he opined, it would not include prohibiting the stalker from following a petitioner's vehicle. In response to a question, he said that he would not consider following someone's vehicle to be a type of communication, adding that the only question that remains is whether that behavior is technically a type of stalking.

REPRESENTATIVE CRAWFORD remarked that the Department of Law advised against including language pertaining vehicles. He, too, relayed that he wanted to keep HB 1 narrow in order to increase its chances of passing.

REPRESENTATIVE GRUENBERG referred to AS 18.66.100(c)(13) - (16). He noted that paragraph (13) allows the domestic violence protective order to require the reimbursement of "expenses associated with the domestic violence, including medical expenses, counseling, shelter, and repair or replacement of damaged property". He suggested that the sponsor might wish to include similar language in the provisions of HB 1. He asked Ms. Wells if such language would have been helpful in her case.

MS. WELLS indicated that since she was already determined to take steps to ensure her family's wellbeing and had access to free resources, such language was not necessary in her situation.

REPRESENTATIVE GRUENBERG returned to AS 18.66.100(c)(13) - (16) and suggested that the sponsor give consideration to perhaps including similar language in HB 1. On a different issue, he remarked that it appears that under HB 1, a stalking protective order would only last six months, without provision for an extension.

MS. HUGONIN pointed out that nothing precludes the victim from applying for another six-month stalking protective order if he/she feels it's necessary.

Number 0936

REPRESENTATIVE GRUENBERG asked Ms. Hugonin whether many victims of stalking will need to get an extension. He made the observation that stalking behavior can go on for quite a long period of time.

MS. HUGONIN replied:

I think we don't have the experience yet, so it could be that in a couple of years we come back and say, "It's still not enough." But ... our hope is that within that six-month period of time, there's going to either be a recognition on the stalker's part - which is less likely - that that behavior is wrong and they need to stop it, or there's going to be enough evidence gathered that a criminal case can be pursued. So this is a protection, when we hope that we can have another level step in and help. And I don't know the answer to your question.

REPRESENTATIVE GRUENBERG remarked that stalkers are quite difficult to treat.

MS. HUGONIN agreed.

REPRESENTATIVE COGHILL asked how HB 1 will work for instances of stalking between juveniles, especially the ex parte provisions.

MS. HUGONIN said that a large part of how the judge or magistrate will make that determination will be through information [he/she] receives from the petition itself. Thus one way of getting adequate information is through the petition process. She that when the court-forms committee, in which the ANDVSA participates as a consumer group, created the domestic violence protective order, the committee made an effort to have the form ask the questions in such a way that the most information possible would be placed before the judges and magistrates that have to make the decisions about the orders. She remarked that ex parte orders are limited in time so that a petitioner has an opportunity to get a regular order, at which time the respondent also has an opportunity to come before the judge and put forward his/her side.

REPRESENTATIVE COGHILL mentioned that sometimes at or after interscholastic sporting events, both parents and their children

can get caught up in school/team rivalries and do very mean things to one another. He indicated that he did not want to see HB 1 come to be used as a tool of retribution in those circumstances.

Number 0557

MS. HUGONIN pointed out that with regard to stalking protective orders, judges and magistrates will be looking at the definition of stalking to ensure that orders are granted only in the situations that warrant them. She posited that the circumstances described by Representative Coghill would not rise to the level of stalking, which is described as repeated behavior. She relayed that the court-forms committee is very conscientious about looking at legislative intent in order to understand what the legislature is trying to accomplish with its legislation.

REPRESENTATIVE COGHILL indicated that it is important that protective orders be used for protection, not revenge.

MR. ROBERTS, regarding comments made earlier, clarified that the standard used will be a finding of probable cause, not a preponderance of the evidence. He, too, surmised that the court will be able to ferret out the issues and ensure that orders are only granted for a finding of probable cause. He also confirmed Ms. Hugonin's comments regarding the time limits of ex parte orders.

CHAIR McGUIRE noted that Lieutenant Leveque with the Alaska State Troopers is available for questions.

Number 0184

CHAIR McGUIRE made a motion to adopt Amendment 1, which she called a conforming amendment and which read [original punctuation provided]:

AS 18.65.740(c) is amended to read:

(c) In this section, "protective order" means an order issued or filed under AS 18.65.850 - 18.65.870 or AS 18.66.100 - 18.66.180.

[Note that the statute being amended is actually AS 11.56.740(c).]

CHAIR McGUIRE asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

CHAIR McGUIRE then drew attention to Amendment 2, which read [original punctuation provided]:

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 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 protective order after it has expired.

CHAIR McGUIRE noted that this language was in a prior version of the legislation, but was taken out due to fiscal concerns. She indicated that [the state] has since received a federal grant, under the Violence Against Women Act, for the purpose of creating a central registry. This central registry now tracks existing protective orders, and she remarked that it is very important to maintain it so that [law enforcement can keep up to date]. She mentioned that the House Finance Committee may want to look at this issue further because of the federal monies.

REPRESENTATIVE HOLM said that he is assuming that an ex parte order does not require the level of proof that he suggests is necessary when creating "this kind of a list."

TAPE 03-5, SIDE A

Number 0020

REPRESENTATIVE HOLM indicated that he is concerned that this list will be like the sex offender registry but without the people on it actually being convicted of anything, since protective orders are granted merely as a protective measure rather than because somebody is convicted of a crime.

CHAIR McGUIRE noted that the central registry of protective orders already exists, and that Amendment 2 would merely allow stalking protective orders to be included in that registry. She also noted that for each protective order, the registry requires information about the conditions and duration of the order. She pointed out that there is a process for appeal should the respondent feel that the order was issued in error.

REPRESENTATIVE HOLM said he is merely taking issue with the presumption of guilt.

MS. HUGONIN explained that for an ex parte order, the standard is probable cause, which is a step above a preponderance of the evidence and a step below clear and convincing [evidence]. Therefore, she remarked, it is a higher level than to get "the regular order." She also pointed out that the central registry of protective orders is not an open registry available to the general public. It is only available to law enforcement and, thus, it is not analogous to the sex offender registry.

REPRESENTATIVE GRUENBERG relayed his understanding that in a criminal setting, the standard of probable cause is whether the evidence would support a conviction if that were the final state of the evidence. He asked Mr. Roberts if his understanding is correct.

MR. ROBERTS said that it sounds as though Representative Gruenberg is referring to Rule 5 of the Alaska Rules of Criminal Procedure. He indicated his understanding of the standard of probable cause to be: would a reasonable person believe, based upon the facts and circumstances presented, that, one, a crime has been committed and that, two, the person identified is the person who committed the crime? He went on to say that he'd assumed that the standard used for existing domestic violence protective orders is a preponderance of the evidence, but he has noticed that HB 1 specifically states that the standard shall be probable cause.

Number 0356

REPRESENTATIVE GRUENBERG relayed that he merely wanted to highlight the difference between probable cause and preponderance of the evidence after an evidentiary hearing. He posited that the difference is that after an evidentiary hearing, both sides have been heard, or at least the defense has been given an opportunity to present its case. On an ex parte basis, he added, only one side is heard.

MR. ROBERTS said that is correct.

REPRESENTATIVE HOLM remarked that he did not want to go down a road that convicts folks without due process.

CHAIR McGUIRE relayed that Amendment 2 came at the request of the sponsor and Ms. Hugonin, with the goal of using some of the federal monies available. She remarked that the public policy to create a central registry of protective orders has already been decided by the legislature; the question at this time is whether to include stalking protective orders in that registry. She opined that since the money has already been made available, it would be useful to do so.

REPRESENTATIVE GRUENBERG said he supports Amendment 2. He clarified for Mr. Roberts that probable cause is the standard for ex parte domestic violence protective orders; the standard in HB 1 is identical to that statutory scheme.

REPRESENTATIVE CRAWFORD mentioned that HB 1 does allow for a respondent to present his/her case and "have it erased" if wrongly accused. He remarked that "it also expires after 20 days - it won't be on the registry after that 20 days if the accused doesn't have it taken off earlier."

REPRESENTATIVE HOLM asked if that 20 days is related to the ex parte order.

CHAIR McGUIRE remarked that an ex parte order is granted only because of the immediacy of the problem, the notion being that at the end of that 20 days, a victim will have to come forward with more evidence.

REPRESENTATIVE HOLM relayed his concern that the name in the registry terminates at that time as well.

Number 0594

REPRESENTATIVE GRUENBERG noted that the existing statute regarding the central registry is displayed in Amendment 2.

REPRESENTATIVE COGHILL observed that a portion of that existing statute says, "The registry shall retain a record of the protective order after it has expired."

CHAIR McGUIRE surmised, then, that Representative Crawford's comment that an instance of a protective order will simply be erased from the central registry after it expires is incorrect. The current statute specifically states that the record shall be retained. She acknowledged that although the committee may wish to address that issue [in the future], it is not specifically a

part of HB 1 and Amendment 2 merely addresses whether to add stalking protective orders to the existing registry.

Number 0678

CHAIR McGUIRE made a motion to adopt Amendment 2 [text provided previously]. There being no objection, Amendment 2 was adopted.

Number 0690

REPRESENTATIVE ANDERSON moved to report HB 1, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 1(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0717

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:47 p.m.