

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 7, 2011

1:03 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 76

"An Act relating to costs and fees for stalking and sexual assault protective orders."

- HEARD & HELD

HOUSE BILL NO. 153

"An Act relating to the scheduling and rescheduling of certain substances as controlled substances."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 76

SHORT TITLE: STALKING/SEXUAL ASSAULT PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) HOLMES

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|----------|-----|---------------------------------|
| 01/18/11 | (H) | PREFILE RELEASED 1/14/11 |
| 01/18/11 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/18/11 | (H) | JUD, FIN |
| 03/07/11 | (H) | JUD AT 1:00 PM CAPITOL 120 |

BILL: HB 153

SHORT TITLE: CONTROLLED SUBSTANCES

SPONSOR(S): REPRESENTATIVE(S) JOHANSEN

02/11/11 (H) READ THE FIRST TIME - REFERRALS
02/11/11 (H) JUD, FIN
03/07/11 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JAMES R. WALDO, Staff
Representative Lindsey Holmes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 76 on behalf of the sponsor, Representative Holmes.

LISA A. MARIOTTI, Policy Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 76.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 76, responded to questions regarding the length of various protective orders.

REID HARRIS, Staff
Representative Kyle Johansen
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 153 on behalf of the sponsor, Representative Johansen.

ORIN DYM, Forensic Laboratory Supervisor
Scientific Crime Detection Laboratory
Office of the Commissioner
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 153.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 153.

VIKI WELLS, Behavioral Health Specialist
Southcentral Regional Team
Treatment & Recovery Section
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to a question during discussion of HB 153.

DOUGLAS MOODY, Deputy Director
Criminal Division
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 153.

ACTION NARRATIVE

[1:03:21 PM](#)

VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Thompson, Keller, Pruitt, Holmes, and Lynn were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representative Gatto was excused.

HB 76 - STALKING/SEXUAL ASSAULT PROTECTIVE ORDERS

[1:04:14 PM](#)

VICE CHAIR THOMPSON announced that the first order of business would be HOUSE BILL NO. 76, "An Act relating to costs and fees for stalking and sexual assault protective orders."

REPRESENTATIVE HOLMES, speaking as the sponsor, explained that HB 76 is intended to fix a loophole in the statutes pertaining to protective orders for stalking and sexual assault. When the statutes pertaining to protective orders for domestic violence (DV) were created, they included a provision that allowed the court to order a perpetrator of DV to pay the costs and fees incurred by the victim for the protective order. However, when the statutes pertaining to protective orders for stalking and sexual assault were created, no such similar provision was

included. She characterized this as an oversight that HB 76 would correct.

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JAMES R. WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature, on behalf of the sponsor, Representative Holmes, explained that Section 1 of HB 76 would add a new paragraph (5) to AS 18.65.850(c) that would allow the court, when issuing a protective order for stalking or sexual assault, to also require the respondent to pay the costs and fees incurred by the petitioner in bringing the action. Section 2 would alter AS 18.65.855 such that proposed AS 18.65.850(c)(5) would not apply in situations involving ex parte and emergency protective orders for stalking and sexual assault; this exemption mirrors one in the statutes pertaining to ex parte and emergency protective orders for DV.

REPRESENTATIVE LYNN asked what a protective order typically costs.

MR. WALDO suggested that others might be better able to address that question, but surmised that there could be a number of costs associated with a protective order. In response to a question, he explained that the change proposed by Section 1 of HB 76 would allow the stipulation about paying costs and fees to be included in the protective order itself, whereas, in contrast, recovering such costs and fees under the Alaska Rules of Civil Procedure - specifically Rule 79 pertaining to costs and Rule 82 pertaining to attorney fees - would require additional court filings from the victim, and these could be fairly onerous, particularly when the victim is a pro se petitioner.

REPRESENTATIVE GRUENBERG, noting that he supports HB 76, questioned whether the changes proposed by HB 76 constitute an indirect court rule change.

MR. WALDO offered that HB 76's proposed new language simply mirrors language already existing in the statutes pertaining to protective orders for DV.

REPRESENTATIVE HOLMES added that the proposed changes have already been vetted by both the Department of Law (DOL) and Alaska Court System (ACS), and neither raised concerns about potential court rule changes.

MR. WALDO, in response to a question, explained that under current Alaska law, protective orders for stalking and sexual assault may only contain those items listed in AS 18.65.850(c), which currently reads:

- (c) A protective order issued under this section may
- (1) prohibit the respondent from threatening to commit or committing stalking or sexual assault;
 - (2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner or a designated household member of the petitioner specifically named by the court;
 - (3) direct the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner; however, the court may order the respondent to stay away from the respondent's own residence, school, or place of employment only if the respondent has been provided actual notice of the opportunity to appear and be heard on the petition;
 - (4) order other relief the court determines to be necessary to protect the petitioner or the designated household member.

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MR. WALDO again explained that Section 1's proposed AS 18.65.850(c)(5) would allow the court, if it so chooses, to also include in the protective order a requirement that the respondent pay the costs and fees incurred by the petitioner in bringing the action. In response to a further question, he relayed that the language in proposed paragraph (5) mirrors that found under existing AS 18.66.100(c)(14), which pertains to protective orders for DV. Again, HB 76 would merely be addressing an oversight in the statutes pertaining to protective orders for stalking and sexual assault, and because the proposed provisions are already part of existing law as it pertains to protective orders for DV, the courts have already dealt with such provisions.

MR. WALDO, in response to questions, reiterated that Section 2 would alter AS 18.65.855 such that proposed AS 18.65.850(c)(5) would not apply in situations involving ex parte and emergency protective orders for stalking and sexual assault; and that this exemption mirrors one pertaining to ex parte and emergency protective orders for DV. In situations involving ex parte and

emergency protective orders, the respondent wouldn't be present or have knowledge of the proceeding, and so there would be significant due process issues raised if the court were to require the respondent to pay costs and fees when he/she wasn't present to defend himself/herself. He then recounted his understanding of the various types of protective orders available in Alaska.

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LISA A. MARIOTTI, Policy Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), explained that last summer the ANDVSA became aware of two cases in which the respondent of a stalking and sexual assault protective order came to the proceeding with a lawyer and essentially turned it into a mini-trial in order to thwart the process. [The magistrates in those cases] felt it was appropriate to order the respondent to pay for the costs and fees incurred by the petitioner, but current statute didn't allow for it. The ANDVSA thought this odd because the law already allows the court to order a respondent of a protective order for DV to pay costs and fees incurred by the petitioner, and so the ANDVSA approached the sponsor about introducing a bill to remedy the situation, the result being HB 76.

MS. MARIOTTI, too, pointed out that when the statutes pertaining to protective orders for DV were created, they included a provision that allowed the court to order the respondent to pay costs and fees, and offered her understanding that the inclusion of that provision didn't result in an indirect court rule change. House Bill 76 would bring some parity to the statutes pertaining to protective orders, and, under the bill, it would not be mandatory for the court to order a respondent of a protective order for stalking or sexual assault to pay the costs and fees incurred by the petitioner, but would instead be left up to the court to determine on a case-by-case basis whether such would be appropriate. In conclusion, she relayed that the ANDVSA fully supports HB 76, and agreed to provide the committee with information about typical costs and fees associated with protective orders.

REPRESENTATIVE GRUENBERG, in response to information provided him, expressed disfavor with the fact that protective orders for stalking and sexual assault are only in effect for six months, and relayed that he would be researching that issue further.

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DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), in response to questions, provided information about the lengths of the various types of protective orders available in Alaska.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HB 76, and announced that HB 76 would be held over.

HB 153 - CONTROLLED SUBSTANCES

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VICE CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 153, "An Act relating to the scheduling and rescheduling of certain substances as controlled substances."

[1:47:49 PM](#)

REID HARRIS, Staff, Representative Kyle Johansen, Alaska State Legislature, on behalf of the sponsor, Representative Johansen, mentioned that similar legislation has been introduced in prior years, and explained that Section 1 of HB 153 would add two new substances - Salvia divinorum, and Salvinorin A (Divinorin A) - to the list of schedule IIA controlled substances in AS 11.71.150. Salvia divinorum is the name of a particular plant, a perennial herb in the mint family indigenous to southern Mexico but capable of being grown pretty much anywhere, and Salvinorin A (Divinorin A) is the active ingredient derived from that plant. In fact, Salvinorin A (Divinorin A) is, by weight, the most potent naturally-occurring hallucinogen known. Information from the U.S. Drug Enforcement Administration (DEA) indicates that some of the effects of Salvia divinorum include perceptions of bright lights, vivid colors, shapes, body movement, and body or object distortions; an inducement of fear and panic; uncontrollable laughter; a sense of overlapping realities; other hallucinations; [loss of coordination; dizziness; and slurred speech].

MR. HARRIS noted that neither Salvia divinorum nor Salvinorin A (Divinorin A) have been scheduled by the DEA yet, though it has added them to its "diversion list." As of September 2010, 24 states and 20 countries have [taken steps to control) Salvia divinorum, either banning it outright or banning its sale to

minors or doing both to some extent. Salvia divinorum's pharmaceutical effects are still being studied - it has been used in Mexico for thousands of years, though its use as a recreational drug in the United States is very recent - and its long-term effects aren't yet known, though it may have some value in reducing gastrointestinal disease and in drug treatment therapy. Under HB 153, only the recreational use of Salvia divinorum and Salvinorin A (Divinorin A) would be outlawed, not medical research. A number of videos of people using Salvia divinorum are available on the Internet, he relayed, and the drug's use has become very popular among young people; on those videos, users "wig out and then pass out for about five minutes, and then wake up and kind of go, 'What happened?'" The average user is between 18 and 25 years old, though some users are as young as 12, and the drug can be purchased at local stores in Alaska.

MR. HARRIS explained that Sections 2 and 3 of HB 153 would move buprenorphine from the list of schedule VA controlled substances in AS 11.71.180, to the list of schedule IIIA controlled substances in AS 11.71.160. Buprenorphine is a semi-synthetic opioid used in lower doses to treat addicts and to control moderate pain in non-opioid-tolerant individuals, but it also, much like other opioids, has a high potential for abuse. This proposed change is anticipated to increase buprenorphine's enforceability, and was added at the request of law enforcement because of a recent increase in its abuse.

MR. HARRIS noted that at one point, the sponsor had considered only making it illegal to sell Salvia divinorum and Salvinorin A (Divinorin A) to minors, but then, after seeing videos of users and how seriously the drug affects them, decided to address the issue via an outright ban, listing it in the same schedule as other hallucinogens.

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ORIN DYM, Forensic Laboratory Supervisor, Scientific Crime Detection Laboratory, Office of the Commissioner, Department of Public Safety (DPS), in response to a question, indicated that the Scientific Crime Detection Laboratory ("Crime Lab") has expertise in detecting the presence of the substances listed in the bill.

[2:00:32 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said that the DPS supports HB 153 primarily because without its proposed changes, law enforcement could have difficulty charging drivers under the influence of such substances with driving under the influence (DUI).

2:01:30 PM

VIKI WELLS, Behavioral Health Specialist, Southcentral Regional Team, Treatment & Recovery Section, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), relayed that Salvia divinorum and Salvinorin A (Divinorin A) have been advertised on the Internet as legal alternatives to lysergic acid diethylamide (LSD) and mescaline that can produce an out of body experience. Because tests to determine the presence of these substances have only recently become available, there hasn't been much in the way of detection or reporting by grantees of substance-use-disorder programs. She surmised that it could be difficult to control salvia because, as a plant, its cuttings are easily available on the Internet, it's relatively inexpensive, and it's easily grown - in fact, in some states, it's grown as a decorative plant. With regard to buprenorphine, she explained that it's primarily used for the treatment of opioid addiction, and sometimes for pain. Its abuse, nationally, has been a growing problem, and considering the prevalence of opioid addiction in Alaska, she predicted that it would continue to be a growing problem here as well. In conclusion, she offered her understanding that treating buprenorphine as a schedule IIIA controlled substance, as the bill proposes, would mirror how the federal government treats it.

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DOUGLAS MOODY, Deputy Director, Criminal Division, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), noting that buprenorphine is used for the treatment of opioid addiction, offered his understanding that heroin abuse constitutes the State's biggest opioid problem. In response to questions, he said that he is unaware of there currently being a problem with people becoming addicted to buprenorphine; that although under current law, some controlled substances are listed in more than one schedule depending on the amount, he is unable to say whether the same approach ought to be taken with buprenorphine; and that it seems that the

hallucinogens Salvia divinorum and Salvinorin A (Divinorin A) are short-acting compared with other hallucinogens.

MR. DYM, in response to a question, indicated that it's not anticipated that HB 153 would have a fiscal impact on the Crime Lab.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HB 153, and announced that HB 153 would be held over.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:13 p.m.