

HB

76

<TARGET><BILL>HB 76</BILL><SUBJECT>HB
76</SUBJECT><COMM>HJUD27</COMM></TARGET>

**Representative
Lindsey Holmes**

Capitol Room 405
465-4919
465-2137 fax



MEMORANDUM

Date: 16 February 2011

To: Representative Carl Gatto,
Chair of the House Judiciary Committee

From: Representative Lindsey Holmes

RE: Hearing Request for House Bill 76



Mr. Chair, I would like to request a hearing for House Bill 76, "An act relating to costs and fees for stalking and sexual assault protective orders," in the House Judiciary Committee. HB 76 is a bill designed to increase protection for victims of sexual assault and stalking. I expect that the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), the Council on Domestic Violence and Sexual Assault (CDVSA) and other organizations concerned with sexual assault and stalking will testify in favor of this bill. Attached you will find a copy of the bill, the sponsor statement, a sectional prepared by legislative legal and a letter from the ANDVSA. James R. Waldo from my staff is carrying this bill. He can be reached by email at james.waldo@legis.state.ak.us or his direct line at 465.6597. Please contact myself or James if you have any questions regarding this legislation. Thank you very much for your consideration.



Representative Lindsey Holmes

House Bill 76 Sponsor Statement

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

House Bill 76 changes the law so that when a victim of stalking or sexual assault gets a protective order, the judge may order the perpetrator to pay any fees associated with the order. Obtaining a protective order can be a very difficult and confusing task. Adding fees or other costs in addition to the other difficulties involved seems inappropriate for a victim seeking safety from a perpetrator of sexual assault or stalking. HB 76 will ensure that the perpetrators of these crimes, and not the victims, will bear the cost of court protection.

There are two types of restraining orders a person can file for: domestic violence protective orders, or stalking and sexual assault protective orders. Right now, when a person petitions for a domestic violence restraining order, the court can require the perpetrator to pay fees associated with obtaining the protective order. However, this cannot currently be done with sexual assault and stalking protective orders that do not involve domestic violence. Victims of stalking and sexual assault should have the same protection as victims of domestic violence. HB 76 would close this gap, bringing parity to the protective order statutes.

The legislature recognized the difficulties in obtaining a protective order for victims of domestic violence when it included this fee provision in the domestic violence protective order statute. Unfortunately, this remedy was left out when the sexual assault and stalking protective order statute was adopted. Please join me in supporting HB 76, so we can extend this protection to the victims of sexual assault and stalking.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 15, 2011

SUBJECT: Sectional Summary -- HB 76 (Work Order No. 27-LS0067\A)

TO: Representative Lindsey Holmes
Attn: James Waldo

FROM: Gerald P. Luckhaupt 
Assistant Revisor

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 18.65.850(c) to allow a court, when issuing a stalking or sexual assault protective order, to require the respondent to pay the costs and fees incurred by the petitioner in bringing the action.

Section 2 of the bill amends AS 18.65.855 to clarify that a court, when issuing an ex parte or emergency stalking or sexual assault protective order, may order any of the relief available in AS 18.65.850(c) other than the award of costs and fees.

GPL:ljw
11-111.ljw

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB076 IA
() Publish Date _____

Identifier (file name): HB076-LAW-CRIM-03-04-11 Dept. Affected Law
Title An Act relating to costs and fees for stalking and sexual assault protective orders. Appropriation Criminal
Allocation Criminal Justice Litigation
Sponsor Representative(s) HOLMES
Requester (H) Judiciary OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
Date/Time 3/4/11 2:00 PM
Date 3/4/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

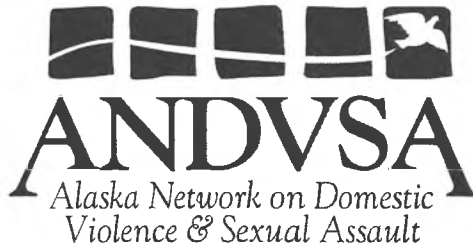
BILL NO. HB 076

Analysis

HB 76 allows the court to order the respondent to pay the costs and fees incurred by a petitioner in bringing a petition for a sexual assault or stalking protective order. An order to pay costs under the bill would only be allowed if the respondent had notice and an opportunity to be heard on the petition.

Passage of this legislation would have no foreseeable fiscal impact on the Department of Law.

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www.andvsa.org



Pro Bono Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907) 747-7547

February 7, 2011

Representative Lindsey Holmes
State Capitol – Room 405
Juneau, AK 99801

RE: Letter of Support for HB 76

Dear Representative Holmes:

On behalf of the Alaska Network on Domestic Violence & Sexual Assault member programs, and the victims of domestic violence, sexual assault and stalking that we serve, thank you for sponsoring HB 76.

HB 76 will bring parity to the statutes regarding remedies available to domestic violence, sexual assault and stalking victims. HB 76 will insure that abusers, and not victims, bear the costs when a victim must seek safety for herself and her children. Under current law, a judge, in their discretion, may order an abuser to pay the costs incurred by a domestic violence victim who obtains a protective order. No similar remedy exists for sexual assault and stalking victims.

Obtaining a protective order for safety can often be a confusing matter, especially for those who have never experienced the criminal or civil justice systems. Attorneys can assist victims with successfully getting this safety measure, but the costs of obtaining a lawyer can preclude victims from seeking such assistance. Further, victims can face an additional hurdle when they need an interpreter to translate their story to the judge or magistrate and relay back the questions asked, when English is not their first language.

The legislature realized these obstacles victims of domestic violence experience in obtaining safety and included this remedy in the domestic violence statute. Unfortunately, when the sexual assault and stalking protective order statute was adopted, this remedy was left out. HB 76 will correct this disparity by providing the same remedies to victims of sexual assault and stalking, that victims of domestic violence already have and insure that victims of domestic violence, sexual assault and stalking are treated equally under the law.

Sincerely,

Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director

Member Programs

Anchorage AWAIC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE
Fairbanks IAC Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC
Kotzebue MFCC Nome BSWG Sitka SAFV Unalaska USAFV Valdez AVV

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MEMORANDUM

March 10, 2011

SUBJECT: HB 76 -- Stalking and Sexual Assault Protective Orders Costs and Fees (Work Order No. 27-LS0067\A)

TO: Representative Carl Gatto
Chair of the House Judiciary Committee
Attn: Sarah Munson

FROM: Gerald P. Luckhaupt
Assistant Revisor

You have asked if sec. 1 of the bill amends a court rule (specifically Civil Rule 79) and if so should a court rule change be noticed in the title and in the bill. In my opinion HB 76 does not amend a court rule and notice of a court rule change is not necessary. HB 76 merely provides that the court when issuing a stalking and sexual assault protective order may order the respondent to pay the costs and fees incurred by the petitioner. This provision does not change the costs and fees that may be awarded under the civil rules nor, for that matter, does it change the way costs and fees may be awarded.

I would also direct your attention to AS 18.66.100(c)(14) upon which this bill is based. AS 18.66.100(c)(14) provides for the awarding of costs and fees in a domestic violence protective order and was enacted as § 33, ch. 64, SLA 1996. Numerous court rule changes were noticed and contained in ch. 64, SLA 1996 although none related to AS 18.66.100(c)(14) and the inclusion of a requirement that the respondent pay the costs and fees of the petitioner. I have not heard of a case where this provision has been questioned as improperly amending a court rule.¹

GPL:plm
11-134.plm

¹ Rarely will costs and fees ever be awarded as most of the costs and fees that are normally awarded in civil actions (such as filing fees and service fees) are not charged to a petitioner for a protective order.