ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 3, 2006
1:09 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Pete Kott
Representative Peggy Wilson
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 200(JUD) am
"An Act relating to defense of self, other persons, property, or services."

- MOVED HCS CSSB 200(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 227
"An Act relating to the Alaska Small Loans Act; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 200
SHORT TITLE: USE OF FORCE TO PROTECT SELF/HOME
SPONSOR(S): SENATOR(S) THERRIAULT

05/10/05	(S)	READ THE FIRST TIME - REFERRALS
05/10/05	(S)	JUD
01/19/06	(S)	JUD AT 8:30 AM BUTROVICH 205
01/19/06	(S)	Heard & Held
01/19/06	(S)	MINUTE(JUD)
01/24/06	(S)	JUD AT 8:30 AM BUTROVICH 205
01/24/06	(S)	Heard & Held
01/24/06	(S)	MINUTE(JUD)

02/02/06	(S)	JUD AT 8:30 AM BUTROVICH 205
02/02/06	(S)	Moved CSSB 200(JUD) Out of Committee
02/02/06	(S)	MINUTE(JUD)
02/03/06	(S)	JUD RPT CS 3DP 1NR NEW TITLE
02/03/06	(S)	DP: SEEKINS, HUGGINS, THERRIAULT
02/03/06	(S)	NR: FRENCH
03/27/06	(S)	TRANSMITTED TO (H)
03/27/06	(S)	VERSION: CSSB 200(JUD) AM
03/28/06	(H)	READ THE FIRST TIME - REFERRALS
03/28/06	(H)	JUD, FIN
04/03/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR GENE THERRIAULT
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 200.

BRIAN JUDY, Senior State Liaison
National Rifle Association - Institute for Legislative Action (NRA-ILA)
Sacramento, California
POSITION STATEMENT: Testified in support of SB 200.

DAVID STANCLIFF, Staff
to Senator Gene Therriault
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of SB 200, responded to questions on behalf of the sponsor, Senator Therriault.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of SB 200.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:09:29 PM. Representatives McGuire, Coghill, Wilson, Gruenberg, and Kott were present at the call to order. Representatives Gara and Anderson arrived as the meeting was in progress.

SB 200 - USE OF FORCE TO PROTECT SELF/HOME

[Contains brief mention of HB 314, companion bill to SB 200.]

1:09:46 PM

CHAIR McGUIRE announced that the only order of business would be CS FOR SENATE BILL NO. 200(JUD) am, "An Act relating to defense of self, other persons, property, or services."

CHAIR McGUIRE noted that the companion bill to SB 200 [HB 314] had already been heard in committee.

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SENATOR GENE THERRIAULT, Alaska State Legislature, sponsor, relayed that the latest version of SB 200 is [more specific] with regard to where and when deadly force can be used; contains a definition of carjacking; provides broader protection for "emergency services personnel"; contains an Alaska-specific definition of gangs; prohibits the use weapons by felons; contains a definition of vehicle that complies with driving under the influence (DUI) statutes; and prohibits the use of deadly force in instances where a safe retreat is assured - though there will be no duty to retreat from premises one owns or leases, or resides or works at, or at which one is a guest or agent of an owner, lessor, or resident, or to retreat if one is a peace officer or is assisting a peace officer, or is protecting a child or member of one's household.

SENATOR THERRIAULT noted that committee packets contain an amendment designed to prohibit a perpetrator of domestic violence (DV) from claiming that the use of deadly force was justified because the victim was attempting to flee in a vehicle with the children; that amendment [which later became Amendment 4] was labeled 24-LS1025\IA.1, Mischel, 3/31/06, and read:

> Page 4, line 30, following "vehicle":
> Insert "; this paragraph does not apply to a person outside of a vehicle who is involved in a dispute with a person inside of the vehicle who is a household member of that person; in this paragraph, "household member" has the meaning given in AS 18.66.990"

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BRIAN JUDY, Senior State Liaison, National Rifle Association - Institute for Legislative Action (NRA-ILA), said he would be speaking in support of SB 200, which, he offered, came about following the passage of similar legislation in Florida referred to as castle doctrine legislation. He offered his belief that the "castle doctrine" is common law and says that one's home is one's castle and one has every right to protect it; in other words, one has no duty to retreat from one's home. Existing Alaska law already provides that there is no duty to retreat if one is on premises that one resides in, and SB 200 proposed to broaden that somewhat.

MR. JUDY encouraged the committee to go back to the language in the original version of both HB 314 and SB 200; language which said that there was no duty to retreat if one was anywhere one was legally allowed to be; if a person is walking down the street or through a park or parking lot and a rapist or kidnapper tries to drag him/her away, the NRA-ILA believes that the person ought to be able to stand his/her ground and meet force with force without having to first determine whether a safe retreat is possible. He referred to the provision that prohibits criminals and their families from suing victims for killing or injuring those who attacked them.

MR. JUDY opined that protecting the right of law abiding citizens to carry firearms is not enough - when under attack from a violent criminal, no person should have to fear civil liability for defending himself/herself; victims, not criminals, should have the protection of law. He said the NRA-ILA strongly supports the civil immunity provision and the expansion of the "no duty to retreat" language, but would urge the committee to consider going even further in that regard, allowing one to defend one's self regardless of where one is. He concluded by urging the committee to support the bill.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 200.

REPRESENTATIVE GARA referred to the provision in SB 200 that allows the use of deadly force to prevent a kidnapping [located on page 3, line 14], and offered his belief that the crime of custodial interference could be considered kidnapping. He said he did not think that they should allow someone to claim that the use of deadly force was justified in instances of custodial

interference. He suggested that this issue should be clarified in the bill.

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DAVID STANCLIFF, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, pointed out on behalf of Senator Therriault that there could be possible exceptions; for example, the person guilty of custodial interference could be endangering a child's life.

REPRESENTATIVE GARA asked whether situations in which a child is endangered would be covered by another provision of the bill.

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DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), offered his belief that they would be. He explained that the crime of custodial interference is not included in the crime of kidnapping; although they are both found under the same article of Title 11, they are treated as completely different crimes. To alleviate concerns, however, the committee could simply add the words, "under AS 11.41.300" to page 3, line 14, after the word, "kidnapping" He said it would be hard to imagine a circumstance involving custodial interference that would give rise to the right to use deadly force for self defense. In response to a question, he said that the language on page 4, line 2, pertains to the duty to retreat rather than to the ability to use self-defense.

REPRESENTATIVE GARA pointed out that the crime of custodial interference in the first degree is a class C felony, and that a provision of the statute pertaining to the crime of kidnapping - AS 11.41.300(a)(1)(E) - says that a person commits the crime of kidnapping if the person restrains another with intent to facilitate the commission of a felony or flight after commission of a felony.

MR. GUANELI opined that the crime of custodial interference - which can only be committed by parents or relatives - cannot be turned into the crime of kidnapping by virtue of simply saying that the person intended to hold the child and flee the state. He reiterated his suggestion to simply add the words, "under AS 11.41.300" to page 3, line 14, after the word, "kidnapping". In response to a question, he explained that any criminal charge or conviction must be based on the specific circumstances of the

case. If a parent hires someone to kidnap his/her child, then the person hired would be guilty of kidnapping, but there is no way to charge the parent with kidnapping in situations of custodial interference because that charge simply doesn't apply.

REPRESENTATIVE GARA reiterated his prior comments.

CHAIR McGUIRE asked Representative Gara to construct an amendment addressing his concern.

REPRESENTATIVE GARA suggested adding the words, ", but not including conduct governed by AS 11.41.320" after the word, "kidnapping" on page 3, line 14.

REPRESENTATIVE GRUENBERG opined that the difference between Representative Gara's suggestion and Mr. Guaneli's suggestion is merely a difference in drafting style, and suggested that they speak to Legislative Legal and Research Services regarding this issue.

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REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, to alter page 3, line 14, "to allow this kind of self defense to be used for kidnapping except for what is defined as custodial interference in the first degree in [AS] 11.41.320."

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

REPRESENTATIVE GARA, in response to a question, explained that only the crime of custodial interference in the first degree is a felony, and thus there is no need to include the crime of custodial interference in the second degree in the proposed exception.

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR McGUIRE asked whether there were any further objections to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG referred to proposed AS 09.65.330(a)(2) - located on page 1, lines 10-11 - and noted that neither nurses nor doctors are mentioned. He said he would like to have other health care professionals who are engaged in emergency activities included in this provision.

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REPRESENTATIVE GRUENBERG [made a motion to adopt] Conceptual Amendment 2, to add [to proposed AS 09.65.330(a)(2)], the words, "health care provider in an emergency situation".

REPRESENTATIVE COGHILL objected for the purpose of discussion. He said he would want this provision to only apply to first responders, and thus is satisfied with the phrase, "in an emergency situation".

REPRESENTATIVE WILSON, in response to a question, reminded members that when they'd included the term, "health care provider" in another bill, they'd defined the term so that it pertained to that bill specifically.

REPRESENTATIVE GRUENBERG said he would like that term as it would be used in SB 200 to be as broad as possible.

CHAIR McGUIRE surmised, then, that the concept is to provide protection to health care providers who are first responders in emergency situations.

MR. GUANELI pointed out that [AS 12.55.155(c)(13)] already provides a sentencing aggravator for conduct directed at fire fighters, emergency medical technicians, paramedics, ambulance attendants, or other emergency responders during or because of the exercise of official duties; therefore perhaps similar language could be used in Conceptual Amendment 2.

CHAIR McGUIRE expressed favor with that idea, adding that she would also like to include health care providers. In this manner, those that may be traveling to emergency situations with the paramedics - the doctors, the nurses - would have the protection offered via proposed AS 09.65.330(a)(2). She suggested that this ought to be the change that Conceptual Amendment 2 makes - tracking the language in AS 12.55.155(c)(13) and including health care providers as well.

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 2 as she proposed it. There being none, Conceptual Amendment 2 was adopted.

REPRESENTATIVE GARA turned to the issue of carjacking, and said he supports providing for the right to use force against a carjacking. However, this could also include a carjacking that

doesn't involve any threat of serious physical injury to the person. One ought to be able to use deadly force if one is threatened during a carjacking, but not if there is no threat of force, he opined; therefore, he would like to consider possibly adding into the definition of carjacking on page 5, language that would stipulate that the situation must involve serious physical injury to the person or threat of serious physical injury to the person. This way there would be a distinction between a carjacking wherein one is not actually physically threatened and a carjacking wherein one is so threatened.

REPRESENTATIVE COGHILL said it seems as though the act of actually taking a vehicle already addresses that issue.

REPRESENTATIVE GRUENBERG surmised that Representative Gara is suggesting that they alter proposed AS 11.81.350(g) such that one would not get to use deadly force unless there is an actual physical threat.

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MR. STANCLIFF mentioned that there was a fair amount of discussion in the Senate on this issue and an amendment was added in order to clarify that exact point, that if one is determined to do whatever it takes to steal a car - including removing someone from that car - that in itself rises to the level wherein [the use of deadly force to prevent the carjacking] would be justified.

REPRESENTATIVE GRUENBERG asked about situations in which the carjacker says, "Give me your car, please get out." If a carjacker uses the word please, he proffered, the driver would know there was no overt threat - the carjacker is simply asking the driver to remove himself/herself.

MR. STANCLIFF posited that under the full context of the bill, one doesn't automatically get to use deadly force; the use of deadly force would only be justified if that is what is necessary. So if a carjacking situation escalates because the driver says, "No" and refuses to get out of the car, and the carjacker then pulls out a gun, there is still a responsibility to only use force when faced with force - one cannot automatically pull out a gun and start shooting when the carjacker first asks one to get out of the vehicle.

MR. GUANELI offered his understanding that one of the purposes of SB 200 is to expand "the area of self defense." A carjacking

is simply a robbery; if it is done with a gun, it is an armed robbery, and if it is not done with a gun but with just the use of force, it is an unarmed robbery. In a normal robbery one would be permitted to use self-defense [only] if it is necessary to protect one's self. Under [proposed AS 11.81.350] one would be allowed to use deadly force not solely to protect one's self but also to prevent the robbery - in other words, to protect one's property. And this is somewhat an expansion of the whole "stand your ground" principle, he remarked, because if one is yanked out of a car and thrown to the ground, he/she may not be in any further physical danger and yet this provision would allow the use of deadly force to terminate the robbery.

MR. GUANELI characterized this as a policy question, whether to expand the notion of self-defense to permit the use of deadly force in such situations, adding that he thought that was indeed one of the purposes of the bill. If the notion of [only using deadly force to protect] one's self is added to this provision, he opined, then they might as well delete the provision entirely and rely on current law.

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REPRESENTATIVE GARA noted that in some robberies, one is not injured or threatened with physical injury, and in some robberies one is threatened with serious physical injury. He said he is calling into question whether they should let a person shoot someone else during a carjacking - or any other form of robbery - if the person is not threatened with serious physical injury.

MR. STANCLIFF mentioned that this policy question has brought on a lot of debate. If a robber is coming into one's home, should one assume that the robber means one no harm? A vehicle can be taken and a person's life put in danger because of that theft, and the bill is proposing to make the taking of a vehicle similar to the entering of a home. Furthermore, the Senate stipulated that the term, "vehicle" includes motor vehicles as defined in AS 28.40.100, aircraft, and watercraft. To have one's vehicle stolen in the middle of February out around Tok could mean life or death. He proffered that the policy question for members is, "How do you look at someone that comes up to a vehicle, opens the door, and wants to throw you out on the street, versus how do you look at a person coming through your front door in the middle of the night; do we look at them differently or not?" As currently written, the bill says [such people] would not be viewed differently, that one has the right

to defend his/her vehicle with deadly force if one reasonably believes that the use of deadly force is necessary.

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REPRESENTATIVE GARA argued, however, that as written, one could use deadly force if he/she believes the use of such force is necessary to stop the taking of the car; there is no requirement that one be threatened with serious physical injury. He asked, "Do we want to say you can shoot somebody if there's no danger of serious physical injury when they're taking your car?"

REPRESENTATIVE COGHILL offered his understanding that the bill is saying that there is a presumption that one has the right to defend one's self and one's property. If this right is misused, he/she will be held accountable. People are not being given the right to go around shooting others but rather the right to defend themselves. He opined that it is a mischaracterization to say that people are being given the right to kill someone for a carjacking; a person must have a reasonable belief that he/she needs to protect himself/herself. He observed that this is quite a bit different than what he was proposing via the bill he introduced - HB 314 - because that bill gave one the right [to use deadly force] to protect one's self regardless of where one was. One of the problems with not doing it that way is that then there is the need to specify every situation in which the use of deadly force would be justified. Of SB 200, he said, "We're saying you have the right, you have a presumption to the right - misuse that right and it will cost you; ... but we're saying to those who want to take you're car, your life, your children, or misuse children, 'Beware, people will have the right to protect [those things].'"

REPRESENTATIVE GRUENBERG relayed that while in Miami, he and his wife had a briefcase taken out of their rental car while they were in it after the perpetrators created a diversion and slashed the car's tires. The similarity between that and a carjacking is that it all happens very fast, the victim doesn't have a lot of time to weigh the circumstances, and it is a very dangerous situation; also, if one is removed from one's car, one could get run over by another car. He said he would appreciate it if proposed AS 11.81.350(g) was not altered in the fashion proposed by Representative Gara.

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MR. STANCLIFF, in response to a question, referred to [what later became known as Amendment 4 - text provided previously].

REPRESENTATIVE GRUENBERG turned the committee's attention to language on page 2, lines 22-26, - proposed AS 11.81.330(a)(4)(C) - which read:

> **(C) acting alone or with others in revenge for, retaliation for, or response to actual or perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, if the person using deadly force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians; or**

REPRESENTATIVE GRUENBERG said that although he supports the concept behind this language pertaining to gang-related activities, it seems to be very convoluted language. He asked whether this language could be simplified while retaining the meaning that if one is involved in a gang-related situation, one doesn't have the right to use deadly force.

MR. STANCLIFF mentioned that the DOL has been wrestling with the issue of gang-related violence and this is the best language it could come up with to describe gang-related activity, adding that this language has received a lot of scrutiny from various law enforcement agencies.

REPRESENTATIVE GRUENBERG referred to the language, "**if the person using deadly force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians**, and offered his understanding that the courts generally frown upon the use of "reputation evidence." Trying a person on the basis of reputation is difficult because a person's reputation can vary depending on whose opinion is sought. He said he is somewhat uncomfortable with the aforementioned language because it could be difficult for a court to apply it. Additionally, the language, "**in revenge for, retaliation for, or response to**" could prove problematic as well. Representative Gruenberg asked Mr. Guaneli to comment.

MR. GUANELI mentioned that the language in proposed AS 11.81.330(a)(4)(C) received a lot of scrutiny in the Senate Judiciary Standing Committee as well as [by law enforcement officials] in Anchorage. He went on to say:

> When trying to expand the right of self defense, do we run the risk of expanding it to the point where people involved in illegal organizations, gangs, et cetera, can also use that doctrine. And so, in trying to avoid that, this [language] was crafted ... with the idea being to try to describe the organizations [or members of those organizations] that you don't want ... able ... to claim self defense.

REPRESENTATIVE GRUENBERG asked how "gang" is defined [elsewhere in statute].

MR. GUANELI mentioned that AS 12.45.037 deals with "street gangs," but said he is not sure that that statute has ever been effectively applied in Alaska because the gangs in Alaska cannot be neatly defined. The goal is to get at groups that in the past have used violence - groups that have a history or a reputation for violence among civilians. If the legislature is going to make history or reputation for violence among civilians an element of the aforementioned provision, then in deciding whether a particular member of a particular group was justified in using deadly force against a member of a rival group, the court is going to allow in evidence of the defendant's history or reputation for violence.

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REPRESENTATIVE GRUENBERG noted that AS 11.81.900(b)(13) defines "criminal street gang" as:

> (13) "criminal street gang" means a group of three or more persons
> (A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and
> (B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:
> (i) AS 11.41;
> (ii) AS 11.46; or
> (iii) a felony offense.

REPRESENTATIVE GRUENBERG remarked that this definition seems just as cumbersome as the language being proposed via AS

11.81.330(a)(4)(C). He suggested that future legislation ought to address the issue of providing for a really good definition of the term, "criminal street gang". That definition could then be used in all the other statutes pertaining to gang-related activities.

MR. GUANELI agreed that the current definition is almost unusable.

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REPRESENTATIVE GARA referred to a proposed amendment he'd written; that proposed amendment [which later became Amendment 3] read [original punctuation provided]:

> P 5 line 3
> after "vehicle" add
> and that involves physical injury to the person or an occupant of the motor vehicle or the person reasonably believes there is a threat of such physical injury

REPRESENTATIVE GARA asked whether he is correct in his understanding that as currently written, the bill would allow a person to shoot someone who's taking the car even if the person has no reasonable belief that he/she might be injured.

MR. GUANELI referred to language in proposed AS 11.81.350(e)(1) - page 4, lines 23-26 - which says:

> (e) A person
> (1) in a vehicle, or forcibly removed from a vehicle, may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a carjacking of that vehicle;

MR. GUANELI concurred that this language does not require that the person be in any particular danger of injury in order to prevent the taking of the car via the use of deadly force, but added that carjacking inherently involves a level of danger. He referred to proposed AS 11.81.350(e)(2), and characterized it as pertaining to vehicle theft situations in which the driver was already outside of the car and someone else has been left in the car; proposed AS 11.81.350(e)(2) read in part:

> (e) A person ...

(2) outside of a vehicle may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the theft of that vehicle when another person, other than the perceived offender, is inside of the vehicle

MR. GUANELI mentioned that this provision doesn't require there to be a specific threat of injury or danger to the [driver] of the car, and that it is this provision that [Amendment 4] proposes to alter.

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REPRESENTATIVE GARA, with regard to proposed AS 11.81.350(e)(1), said he would like to provide that there must at least be a threat of physical injury before one can use deadly force against the carjacker. With regard to AS 11.81.350(e)(2), he characterized that as essentially a kidnapping, and so he thinks it reasonable to allow someone to use deadly force even if there is no threat of physical injury.

REPRESENTATIVE WILSON suggested that the threat or possibility of injury is inherent in any situation where someone refuses to turn over a belonging and starts struggling with the perpetrator.

REPRESENTATIVE GARA said that if a person is going to start fighting with the carjacker, then he wants that person to be able to use [deadly] force to protect himself/herself, but not if there is no danger of harm.

REPRESENTATIVE WILSON surmised, "In other words, you have to fight a little bit before you shoot him."

REPRESENTATIVE GARA countered, "They have to hurt you a little bit."

REPRESENTATIVE COGHILL noted that AS 11.81.350(e)(1) includes the phrase, "forcibly removed from a vehicle", and pointed out that if a person is being pulled from a car, he/she won't know what might happen next - won't know whether the carjacker poses no threat.

MR. STANCLIFF relayed that member's packets include statistics from other states illustrating that once potential perpetrators find out that victims are allowed to use deadly force, crime

rates have dropped. He said that although some mistakes may be made, the question is whether it is time to allow a person to use deadly force to protect an investment worth $30,000, $40,000, or even $50,000 - an investment that might contain kids or a spouse. Mr. Stancliff remarked that Representative Wilson's point is that under Representative Gara's suggested change, if one just backs down and isn't threatened, one cannot shoot a carjacker, whereas if one puts of a struggle, he/she can shoot a carjacker. He opined that [this legislation] will make a difference regarding the number of carjackings that occur.

MR. STANCLIFF, in response to a question, relayed that Florida has the most conservative castle doctrine law and had broad bipartisan support - crime levels in Florida, particularly those related to carjacking or the type of offense that Representative Gruenberg experienced, were astronomical in some areas - and that law is making a difference. People [in Florida] are armed and are protecting their property and, in many instances, it's saving their lives or the lives of their loved ones, and that fact has to be weighed against the possibility that perhaps someone might use [deadly] force inappropriately. But under the bill, such instances will be dealt with in court anyway; the bill is not simply providing people with a license to shoot.

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REPRESENTATIVE GARA made a motion to adopt Amendment 3 [text provided previously.

REPRESENTATIVE COGHILL and CHAIR McGUIRE objected.

REPRESENTATIVE GARA explained that Amendment 3 would require that before a person can use deadly force in a carjacking situation, there must be some threat of physical injury. "If somebody grabs you and throws you out of the car, that's physical injury - you can defend yourself with a gun," he remarked. However, in addition to addressing situations in which one is forcibly removed from a car, the language [in proposed AS 11.81.350(e)(1)] would also allow one to use deadly force on someone who is simply taking the car. He said he doesn't want there to be a circumstance where [a carjacker] steals a car from someone without hurting him/her and then gets shot while driving away.

REPRESENTATIVE COGHILL again pointed out that a person won't know what will happen when a carjacker takes a car - the

carjacker could decide to run over the person - and so a person should have the right to stand one's ground.

REPRESENTATIVE ANDERSON reminded members that last year, the previous committee aide and her mother were victims of a carjacking - the perpetrators physically dragged them from the vehicle and drove off with both the committee aide's dog and Chair McGuire's dog in the vehicle. Representative Anderson asked Representative Gara whether he feels that in that circumstance, the victims shouldn't have been able to use deadly force.

REPRESENTATIVE GARA said that in that scenario the victims would be able to use deadly force because the perpetrators used substantial force in dragging the victims from the car. He again said that he doesn't want someone to use deadly force on a carjacker as he/she is driving away if the carjacker doesn't hurt the victim.

REPRESENTATIVE ANDERSON acknowledged that point.

MR. GUANELI, in response to a question, explained that under existing law, if someone comes into a person's home, robs it, and then leaves, the person may not shoot the perpetrator as he/she is leaving, because the use of deadly force is not necessary for defense of self at that point.

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REPRESENTATIVE KOTT observed the similarities between that scenario and the one involving a carjacker fleeing with a vehicle.

MR. STANCLIFF offered his interpretation that the language in [in proposed AS 11.81.350(e)(1)] is meant to address situations in which either the person is forcibly removed from the vehicle or the person is still in the vehicle when the carjacker drives away.

REPRESENTATIVE KOTT offered his understanding that Representative Gara was focusing on situations where the carjacker is able to take the car away without using force but is then shot while driving off, adding that he was simply trying to draw an analogy between that scenario and one involving someone getting shot while fleeing a house he/she has just robbed.

MR. GUANELI remarked that in a carjacking situation, one would ultimately be protecting property, and again characterized carjacking as an inherently dangerous activity that almost always puts the victim at risk. He agreed that in the former committee aide's situation, under the bill, they would have been allowed to draw a gun and start firing, adding that that doesn't look a whole lot different than the example involving a robber getting shot after leaving house. He suggested that the issue of proximity to the perpetrators could make a difference - for example, if the perpetrators are still right there in front of the person after throwing him/her to the ground versus if they are 200 yards down the road. At some point, the person would not have the right to shoot, just as at some point a person doesn't have the right to shoot someone who's just robbed his/her home; at some point the danger is no longer eminent and the necessity of using force dissipates. Furthermore, at some point the carjacking stops, just as at some point the robbery of a person's home stops; in the latter case, that point is usually when the robber leaves the house.

MR. GUANELI pointed out, however, that a carjacking happens very fast and it occurs in the victim's immediate vicinity, and surmised that it is those circumstances the bill is attempting to address rather than circumstances where the carjackers are already 200 yards down the road.

REPRESENTATIVE COGHILL again remarked that a carjacking victim faces the risk that he/she will be run over by the carjacker, again reiterating his point that a victim won't know what a carjacker intends after throwing the victim from the vehicle.

REPRESENTATIVE KOTT pointed out that before a carjacker can run a victim over, he/she has to drive the car either backwards forwards, and by that time the victim can have a gun out and be firing at the carjacker. He said that if it were him and it looked like he was in eminent danger of being run over, he would be firing his gun at the carjacker.

2:26:08 PM

REPRESENTATIVE GRUENBERG opined that there are problems with the current language in the bill. For example, currently under the bill, because a carjacking is not over until it's over, one could give chase and be firing at a carjacker for miles down the road. He suggested that they alter the bill such that it focuses on situations in which the carjacking is not complete and the carjacker has not left the scene with the vehicle.

Seldom will a carjacking occur, he posited, without some risk that other people are either present at the scene, could show up at the scene, or be in the vicinity during any subsequent chase. Therefore, if one is allowed to shoot at a carjacker, it ought to only be when the victim is at very close range to the carjacker, before the car leaves the scene, and not during any ensuing chase.

REPRESENTATIVE ANDERSON acknowledged that point.

MR. STANCLIFF, in response to a question, relayed that this topic was discussed when the bill was heard in the Senate. Specifically, should someone be allowed to just spray bullets at an attacker in a shopping mall. He stated that his understanding is that Section 6 of the bill - proposed AS 11.81.350(e)-(g) - allows the use of deadly force in three situations: a person is in the vehicle and is never taken out of the vehicle during the carjacking; a person is forcibly removed from the vehicle during the carjacking; or a person is outside of the vehicle during the carjacking but someone else who is not the perpetrator is in the vehicle. The first two situations are addressed via proposed AS 11.81.350(e)(1), and the third situation is addressed via proposed AS 11.81.350(e)(2).

CHAIR McGUIRE asked about situations wherein animals are in the car.

MR. STANCLIFF remarked that animals could added to [proposed AS 11.81.350(e)(2)].

REPRESENTATIVE GRUENBERG opined that the language in proposed AS 11.81.350(e)(1) is too broad because it could be construed to mean that one could shoot a carjacker from another vehicle while giving chase, particularly given that one would always be in a state of having been forcibly removed from a vehicle after such has occurred.

REPRESENTATIVE GARA withdrew Amendment 3.

2:31:15 PM

REPRESENTATIVE COGHILL made a motion to adopt Amendment 4 [text provided previously].

REPRESENTATIVE GRUENBERG objected [for the purpose of discussion], and noted that Amendment 4 focuses on situations

involving disputes between household members but does not stipulate who might be doing the shooting; under Amendment 4, in a domestic violence situation involving the taking of a car while others in the car, neither party would be justified in using deadly force.

MR. STANCLIFF relayed that that point was raised by Senator French.

REPRESENTATIVE GRUENBERG, characterizing that [proposed provision] as a good idea, then removed his objection.

CHAIR McGUIRE asked whether there were any further objections to Amendment 4. There being none, Amendment 4 was adopted.

2:33:46 PM

CHAIR McGUIRE made a motion to adopt Amendment 5, to add on page 4, line 30, the words, "or a pet" before the phrase, "is inside of the vehicle". She characterized situations involving the taking of a car while pets are inside as serious, particularly given that for some people, their pets are like their children.

REPRESENTATIVE COGHILL and REPRESENTATIVE GRUENBERG objected.

CHAIR McGUIRE withdrew Amendment 5.

2:35:30 PM

REPRESENTATIVE GRUENBERG asked Mr. Stancliff whether the sponsor would be amenable to altering proposed AS 11.81.350(e)(1) such that the use of deadly force during a carjacking would only be permitted at or about the time that the vehicle was taken. Such a change could prevent high-speed car chases with people shooting at each other.

MR. STANCLIFF offered his understanding that there would be no problem with clarifying that there is some sort of zone- or time-proximity in which the use of deadly would be allowed. One shouldn't be allowed to fire shots down a busy street at a car 300 yards away.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 6, to alter proposed AS 11.81.350(e)(1) such that it would apply to, "at or about the time the vehicle is taken".

CHAIR McGUIRE surmised that the idea behind Conceptual Amendment 6 is that there will be point at which the ability to use deadly force in a carjacking situation will end.

REPRESENTATIVE COGHILL opined that the current language already seems to embody that concept, and that it would be indefensible to follow a carjacker and shoot him/her just to recover property.

2:38:15 PM

REPRESENTATIVE GRUENBERG pointed out that a carjacking is not over until the car is back in the possession of the person from whom it was taken, and the language currently in the bill says that one can use deadly force to terminate a carjacking. His concern is this could be interpreted by the courts to mean that one would be justified in chasing down the vehicle and shooting the carjacker in order to recover the vehicle - thereby terminating the carjacking. Amendment 6 would clarify this point for the courts.

REPRESENTATIVE COGHILL indicated that he is of the belief that once the car has been taken, the carjacking is over.

REPRESENTATIVE GRUENBERG disagreed; it is still a carjacking as long as the carjackers have the vehicle in their possession.

CHAIR McGUIRE said that in her view, once a car has been taken, it is no longer a carjacking; instead the carjacker is merely proceeding on with a piece of stolen property.

MR. GUANELI said he agrees with everybody: for purposes of charging someone with a crime, Representative Coghill is correct - once the car is taken from a person's control, the carjacker can be charged with the crime of robbery; for purposes of using deadly force, however, Representative Gruenberg has a point that a reasonable person may interpret the language to mean that he/she can "prevent" the carjacking by going and getting the vehicle back. Mr. Guaneli remarked that as prosecutors, the DOL would be inclined to apply the provision as Representative Coghill would, and say that a person would not have the right to go chasing after and shooting at a carjacker once the car has been driven away; on the other hand, a judge might instruct a jury regarding the law of self defense just as Representative Gruenberg foresees.

REPRESENTATIVE GRUENBERG offered his understanding, however, that under the rule of lenity, if there is any question, the court must apply "it" to benefit the defendant, and the defendant in these scenarios would be the person doing the shooting.

REPRESENTATIVE COGHILL removed his objection to Conceptual Amendment 6.

CHAIR McGUIRE asked whether there were any further objections to Conceptual Amendment 6. There being none, Conceptual Amendment 6 was adopted.

2:42:07 PM

REPRESENTATIVE ANDERSON moved to report CSSB 200(FIN) am, as amended, out of committee with individual recommendations and the accompanying [zero] fiscal note.

REPRESENTATIVE GARA objected for the purpose of discussion. He said to Mr. Stancliff that to the extent that the sponsor wishes to work further on the bill, the problem with the carjacking provision is that there doesn't have to be any threat to one's personal safety and yet one can still shoot the carjacker. Representative Gara relayed that he would be happy to work with the sponsor on this issue.

MR. STANCLIFF agreed to relay that message to the sponsor.

REPRESENTATIVE GARA then removed his objection.

CHAIR McGUIRE asked whether there were any further objections to reporting CSSB 200(FIN) am, as amended, out of committee. There being no objection, HCS CSSB 200(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:43 p.m.