

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

August 2, 2006

8:36 a.m.

MEMBERS PRESENT

Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

Senator Ralph Seekins, Chair

COMMITTEE CALENDAR

SENATE BILL NO. 3005

"An Act relating to contempt of court and to temporary detention and identification of persons."

MOVED CSSB 3005(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB3005

SHORT TITLE: DETENTION/IDENTIFICATION; CONTEMPT

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

07/27/06	(S)	READ THE FIRST TIME - REFERRALS
07/27/06	(S)	JUD
08/02/06	(S)	JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

SENATOR CON BUNDE
Alaska State Capitol
Juneau AK 99801-1182

POSITION STATEMENT: Sponsor SB 3005

LAUREN RICE (via teleconference)
Staff to Senator Bunde
Anchorage AK

POSITION STATEMENT: Supported SB 3005

DEAN GUANELI, former Chief Assistant Attorney General
Criminal Division

Department of Law
PO Box 110300
Juneau AK 99811-0300
POSITION STATEMENT: Supported SB 3005

CHIEF WALTER MONEGAN (via teleconference)
Anchorage Police Department
Anchorage AK
POSITION STATEMENT: Supported SB 3005

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Judiciary Standing Committee meeting to order at [8:36:26 AM](#). Present at the call to order were Senators Hollis French, Gene Therriault, Gretchen Guess and Chair Charlie Huggins.

SB 3005-DETENTION/IDENTIFICATION; CONTEMPT

CHAIR CHARLIE HUGGINS asked Senator Bunde to introduce SB 3005.

[8:36:57 AM](#)

SENATOR CON BUNDE, sponsor, presented a statement. He said that he and Mr. Guaneli have made a few changes to the bill since it was last before the committee. He then related an incident of gang-related violence that took place in South Anchorage August 1st and noted that, although these problems occur primarily in Anchorage right now, they will spread to the rest of the state. The genesis of the bill was an incident that occurred at Diamond Center in 2005, when some of the potential witnesses simply refused to speak to police. He was amazed that Alaska had no material witness bill, so that police could at least have required these people to identify themselves.

He stressed that this bill does not require people to testify, just to identify themselves to police so they can be contacted if necessary. He reminded the committee of a story related by Chief Monegan about the Charles Meech killing in Russian Jack, when they stopped a driver in the neighborhood whom they thought might be involved. He was not, but he did identify himself. When police hit a dead-end in the case, they re-interviewed witnesses and found that this person had a crucial piece of information that allowed them to solve the case. If they had been unable to identify this man, the case would not have been solved.

CHAIR HUGGINS said it works both ways. This is essentially the same bill that went to the House Judiciary, where they made a

couple of minor changes to the language on pages 1 and 2 to raise the penalty for certain kinds of contempt of court.

SENATOR FRENCH asked Chair Huggins which version of the bill he was working from.

CHAIR HUGGINS asked for a motion to adopt the CS.

SENATOR FRENCH moved to adopt the proposed committee substitute to SB 3005 Version G, labeled 24-GS3097\G, as the working document. There being no objection, the motion carried.

SENATOR BUNDE noted that on page 2, line 17, they changed the words "may have" to "has" and made some grammatical corrections [in SB 2005] on page 2, line 19; additionally, the intent is covered in lines 24 and 25.

He commented that the bill is worthy of attention because it balances the need to protect individual freedom with the ability to prosecute crime and to provide defendants with witnesses on their behalf. A material witness is crucial to either the defense or the prosecution. Senate Bill 3005 also protects material witnesses from unreasonable confinement, while it helps to ensure their availability for crucial testimony.

[8:42:25 AM](#)

SENATOR BUNDE explained that it allows a police officer to temporarily detain a person if he has reason to suspect that the person may have witnessed a crime, or was in the vicinity of a crime such as a homicide or manslaughter and may have information of material aid in the investigation, and if the temporary detention is reasonably necessary to obtain or verify the identification of the person, to obtain an account of the crime, or to protect the crime victim from imminent harm.

He said that if a person is detained in an investigation of murder, or attempted murder, or misconduct involving weapons in the first degree and refuses to provide identification (ID), or if the officer has a reasonable suspicion that the ID provided is false, the person can be photographed, served a subpoena to appear before a grand jury, or fingerprinted. The bill makes it a Class B misdemeanor to refuse the taking of photographs or fingerprints; but it outlines procedures for destroying those photographs or fingerprints so they are not retained in a permanent database. It also increases the penalty for contempt of court, for failure to honor a subpoena, or refusal to answer

as a witness or appear before a grand jury in connection to felony crimes.

8:44:28 AM

CHAIR HUGGINS identified the senators present and called for questions. He said they have a memo from Pamela Finley, Counsel, Legislative Affairs Agency, and asked if Senator Bunde had a copy.

8:45:12 AM

SENATOR BUNDE said that he did have a copy and would ask Mr. Guaneli to address it; but he felt her concerns were unwarranted.

8:45:42 AM

SENATOR GUESS noted that on page 2, line 15, property crimes are included in the temporary detention, but not in the fingerprinting issue and asked Senator Bunde why that section was expanded to include property crimes.

SENATOR BUNDE replied that Lauren Rice was on the line and he would ask her to respond.

8:46:35 AM

LAUREN RICE, staff to Senator Bunde, said property crimes are important enough to detain witnesses, but not enough to allow fingerprints.

8:47:12 AM

SENATOR GUESS asked Lauren to remind her whether, on page 2, lines 26 through 28, the intent is to allow photographs even if the person provides government-issued ID.

MS. RICE replied yes, that it is already taking place, as most police officers carry cameras and take informal photographs at the scene of a crime. This just clarifies their right to photograph witnesses.

8:47:46 AM

SENATOR GUESS asked Lauren to confirm that on page 2, line 25, where it says, "to accomplish the purposes of this subsection", the subsection referred to is (a)(3).

MS. RICE replied yes, that is lines 11 through 21.

SENATOR BUNDE added that this [lines 26 through 28] is an attempt to ensure that over-zealous enforcement doesn't end up with people "cooling their heels" in a police car for hours.

SENATOR FRENCH wondered about the exclusion of felony drug crimes. He noted that drugs are frequently at the center of difficulties in Anchorage, and asked whether Senator Bunde would consider expanding the scope of the bill to include them.

[8:49:19 AM](#)

SENATOR BUNDE replied he tried to focus on the upper end in an attempt to maintain the balance between protecting individual rights and prosecuting crime. He recognized that many people are concerned about the police having too much power and don't want to be involved, so he would prefer to move forward with this tool and, if it needs to be expanded in the future, he may consider that.

[8:50:08 AM](#)

CHAIR HUGGINS said he has been sensitized by senior citizens in the Matsu Valley, whose concern is that the perpetrator of the crime will see them speaking to police and will take revenge upon them.

SENATOR BUNDE agreed that is a valid concern, but pointed out that police already have the right to talk to them, this just requires that they identify themselves. In addition, the police mentioned that, if a person involved in gang activity spoke to them voluntarily, that person could suffer serious retribution. This law might help because everyone would know that he had no choice in speaking to police, and the same might hold true for senior citizens.

[8:52:54 AM](#)

CHAIR HUGGINS said that his constituents [in District H] have asked why this rule should apply to them, since the problem is in Anchorage.

SENATOR BUNDE responded that it has to be statewide, and that there is a significant level of crime in areas other than Anchorage. He speculated that someone who has been victimized is likely to appreciate the ability of the bill to aid prosecution. A person accused of a crime might appreciate the added ability to gather information to clear him of suspicion. Every law has the potential to infringe on the rights of some citizens, but in this case the net benefit outweighs any negative side effects.

8:54:46 AM

CHAIR HUGGINS commented that this bill has already been before the committee and the House and asked if Senator Bunde would remind the committee of anything that he feels is pertinent from previous discussions.

SENATOR BUNDE responded, as he mentioned to Senator French, the balance between protecting citizens rights, while allowing police the authority to do their jobs, is the core of his concern in this legislation, and he thinks it achieves that. The House passed it so they seem to agree.

8:55:55 AM

CHAIR HUGGINS welcomed Dean Guaneli.

DEAN GUANELI, former Chief Assistant Attorney General, Criminal Division, Department of Law, said that one change from the original bill is an immediate effective date. Given recent events in Anchorage, that seems very appropriate.

He said that the basic standard in Section 2 of the bill, subsection (a), page 2, lines 11 through 21, comes from the American Law Institute, which is a group of legal scholars that proposes model codes in a variety of areas. Alaska's entire criminal code comes from its model penal code. This particular provision is from their model code of pre-arraignment procedure. The provision is supported by Professor Wayne R. LaFave, who is frequently cited by the Alaska Court of Appeals and the Supreme Court on a number of criminal law issues. Our Alaska Supreme Court also cited it with approval in a Kodiak case two years ago. What this means is that peace officers in Alaska have the authority to stop witnesses of serious crimes. What is unclear under the formulation in the model code of pre-arraignment procedure from the American Law Institute, is what crimes they can stop witnesses for and exactly what they can do. This bill sets the parameters.

MR. GUANELI referred to Senator French's question about whether this bill could be expanded to witnesses of drug crimes and stated that the American Law Institute does not recommend it. Because ALI does not recommend it, and given the practical matter that drug crimes might be used by police to stop any number of people in a given area, he felt that it was not appropriate to expand it to drug crimes.

9:00:34 AM

He pointed out that, on Page 2, line 16, one of the changes in the CS is an expansion to misconduct involving weapons under AS 11.61.190 or 195(a)(3), which are the drive-by shooting statutes in Alaska. Particularly given the incident of August 1st, it seems appropriate that when police have a drive-by shooting, it gives them grounds to stop witnesses who may have observed something. Many drive-by shootings also involve crimes against persons; for example, to shoot with reckless disregard so that someone is put in fear of serious injury is assault in the third degree. There may be circumstances when that does not apply, but it is appropriate to include it here, as it is the type of crime that involves a high degree of danger to the public.

[9:01:43 AM](#)

MR. GUANELI said that the language on page 2, line 14 that reads, "person witnessed or was at or near the scene of the commission of a crime" is changed from the previous version, which read, "was in the vicinity of the crime. This change in language is what Professor LaFave recommends and should be more acceptable to members of the House.

He continued to subsection B, page 2, line 22, which provides guidance regarding what the police can do when they stop a person. The idea that the police have specific limitations on what they can do is very important in light of the short memo from legal services that Chair Huggins mentioned. That memo refers to a couple of US Supreme Court cases: Hiibel v. Sixth Judicial District Court of Nevada, a Nevada case from 2004 that says a state can make it a crime to refuse to identify yourself if police have a suspicion that you may have committed a crime; and Brown v. Texas, a Texas case from 1979 that says the reasonableness of stopping citizens depends on a balance between the public interest and an individual's right to personal security without arbitrary interference. In the Texas case, police stopped someone just because he sort of looked suspicious. The US Supreme Court said that you have to look at the gravity of the public concern, the degree to which stopping the person advances the public interest, and the severity of the interference with the public's right to do as they please.

[9:05:14 AM](#)

MR. GUANELI said that, if an individual at or near the scene of a crime does not provide valid ID, this bill allows the police to take his fingerprints. As a practical matter, Anchorage police say that it would take just a few minutes to take thumbprints at the scene, so the intrusion into people's lives

would be minimal. He believes that this bill meets the test set out by the court in the case of Brown vs. Texas.

9:07:22 AM

MR. GUANELI continued to say that the original version of the bill said, if a person does not provide valid government-issued ID, the police could serve a grand jury subpoena on him. If the crime is very serious (murder, attempted murder, or drive-by shooting) the police could take fingerprints even if the person did provide ID. In thinking about keeping interference in people's lives to a minimum, it seemed appropriate to change that and to allow the police to take fingerprints only if a person does not provide ID or if they have reason to suspect that the ID provided is not valid. On page 3, lines 21 and 24 it says that the photographs and fingerprints that are taken must be destroyed "unless the person is suspected of committing a crime within the scope of the investigation". The previous version said, "unless the person is suspected of committing the crime under investigation", but expanding that to include anything that falls within the broad scope of that investigation seems appropriate. If the specific crime under investigation that night was a murder, and the individual was involved in a drug enterprise but not in the murder, it seems inappropriate to force the police to destroy identification if it is within the scope of that investigation.

9:09:36 AM

He summarized by saying that the bill was developed by a well-respected national group of legal scholars, is supported by case law in Alaska, and is a narrowly drawn provision that is greatly needed.

SENATOR THERRIAULT asked whether the current power of police to take pictures is only of the crime scene.

MR. GUANELI replied that the police have authority to take pictures generally of the crime scene and of people at or near the crime scene. All of that has evidentiary value and there are a lot of reasons to allow police to take pictures at or around crime scenes.

SENATOR THERRIAULT said that, under current law, if there is a crowd and a person chooses to turn his back or go into his house, the police cannot compel him to uncover his face or stay to have his picture taken; so there is a material difference between what is happening now and what will be allowed under this bill.

MR. GUANELI confirmed his statement.

SENATOR FRENCH said that he heard that the bill would allow the police to conduct house-to-house searches for witnesses. He said that he checked his criminal procedures book and looked up case law to verify that, at this time, the police must have a search warrant to go into a house to arrest someone who is believed to have committed a crime; an arrest warrant isn't enough to get them into a house. He asked whether this bill changes that.

MR. GUANELI replied no, this bill, being a statutory act, could not overturn any settled case law precedent that requires a search warrant. There are certainly limitations on what the police can do under this bill and it doesn't circumvent any of those Supreme Court requirements.

9:13:10 AM

SENATOR FRENCH said that that last time the committee met on this, they discussed the Hiibel case at some length, and the Brown case is cited in Hiibel, but he had not read it until this morning, after being alerted to it by Pam Finley's memo. In the Brown case, the question was whether the appellant was validly convicted for refusing to comply with the policeman's demand that he identify himself. The Supreme Court said no.

He pointed out that the Fourth Amendment applies to all seizures of a person, including brief detention, and the Fourth Amendment requires that the seizure be reasonable. What the case cleaves on, and it is important that we be aware that we are crossing a divide, is that there has to be some suspicion of wrongdoing. That is the element that creates some concern in the community about the powers granted by this bill. The case says in the absence of any basis of suspecting the appellant of misconduct, the balance between the public interest and the appellant's right to personal security and privacy tilts in favor of freedom from police interference. So we have to be very careful in this bill, about what authority we grant to the police over people whom we do not suspect of wrongdoing.

9:16:12 AM

MR. GUANELI responded to Senator French comments. He said that the 1979 Texas case in the US Supreme Court involved a situation where the police just stopped people because they looked suspicious and without any particular reason. They tried to justify that under existing US Supreme Court case law that talked about reasonable suspicion that a person was engaged in

criminal activity. The Supreme Court said that there was no justification. What the court didn't consider, because the case law at the time only talked about reasonable suspicion of criminal activity, is other circumstances that might give the police grounds for stopping someone. What the court did do was to set out its test... gravity of the public concern, the degree to which it furthers the public interest, and the severity of the interference. Since that time other federal appellate courts including the 9th circuit court, have allowed stopping witnesses in "exigent circumstances", that is serious emergency situations. That case law was cited by our supreme court when it generally approved of this American Law Institute procedure, so it is true to say that the US Supreme Court in 1979 was concerned with the specific case it had before it and the justification that was given for that stop, but the test it set out applies very well to this bill and the kinds of situations in which other courts, including Alaska's, have allowed witnesses to be stopped.

[9:18:36 AM](#)

CHAIR HUGGINS said he was watching a news program showing eye scans being used in Felluja, Iraq for identification. He asked Mr. Guaneli whether we have that technology available to law enforcement here in Alaska.

MR. GUANELI replied that he did not know.

CHAIR HUGGINS asked what would happen with regard to photograph or fingerprints, if a trooper stopped a person and didn't have his fingerprint box with him; would the person walk away, or have to wait for the trooper to go get his equipment.

[9:19:39 AM](#)

MR. GUANELI replied that it might turn on circumstances. The trooper cannot force the person to go with him or remove him from the vicinity, and this bill says specifically "without unreasonable delay", so that person would walk away unless there were very specific circumstances.

CHAIR HUGGINS restated that a law enforcement officer could not force a potential witness to get into the cruiser and go with him for any reason.

MR. GUANELI agreed that he could not, unless the person agreed to go.

SENATOR FRENCH asked whether, if the police station is right across the street, and it's a blustery, snowy day, the officer could require the person to go to the station with him.

MR. GUANELI said that under those circumstances, it would seem to be a reasonable requirement; but police will have to adjudicate those issues on a case-by-case basis.

[9:21:55 AM](#)

SENATOR FRENCH asked Mr. Guaneli to remind him of the procedure for photographs and fingerprints for different types of crimes. He said, if police go to a felony property crime scene, they can take photographs of the witnesses, but cannot require fingerprints.

MR. GUANELI agreed.

SENATOR FRENCH continued, if police go to the scene of a murder or attempted murder like the touch-football example in Anchorage recently, when there were three guns brandished and lots of gunfire, they can take photographs and fingerprints.

MR. GUANELI corrected that they can take fingerprints if a person does not provide valid government-issued ID.

SENATOR FRENCH reiterated that they could take fingerprints only if the person has no government issued ID.

MR. GUANELI replied that is correct

SENATOR FRENCH said that if a person doesn't have ID, for example, a 15 yr old who pedaled his bicycle to the touch football game and doesn't have a government ID, the police would go straight to fingerprints.

MR. GUANELI replied yes, that the requirement for government-issued ID applies regardless of age. The purpose is identification.

[9:23:35 AM](#)

SENATOR FRENCH said that he is very sympathetic to requiring ID in cases of murder, attempted murder, or misconduct 1, but he has a problem with it in a case of felony property crime. It's easy to see a scenario in which detention is authorized for a fairly minor crime... like shoplifting, or running over the neighbor's mailbox. He questioned when to grant the police the authority to detain someone and, moreover, to charge the person

with a crime if he/she doesn't cooperate. Criminals can't be penalized for failing to testify, so he doesn't feel good about giving police the power to charge someone with a crime for not cooperating in the investigation of a \$501 property crime.

9:24:59 AM

MR. GUANELI said that the American Law Institute formulation, cited with approval by the Alaska Supreme Court, talks about a misdemeanor or felony involving violence against a person or appropriation of property; so that would apply to any misdemeanor property offense. This bill limits it to felonies, and it is hard to imagine that the police would apply this law in the investigation of a \$501 shoplifting case, or that witnesses to that shoplifting incident would not voluntarily supply information to the police.

He said that, included within felony property crimes is shooting or attacking the Alaska Pipeline, burglary, breaking and entering, and those might involve witnesses whom the police want to identify, and who might not want to cooperate. We could parse this up into a number of specific subsections, but that may add a level of confusion that is not appropriate.

SENATOR FRENCH agreed that it is difficult to draw lines. He pointed out that certainly shooting at the Alaska Pipeline is a serious crime, but selling drugs to children is a serious crime as well, and this bill excludes that entire classification of offenses. He noted that lethal threats to human life are what his constituents are concerned about and, short of that, normal police investigative procedures seem to work well.

He suggested that on page 3, line 29, the words "photographs or" be deleted so that it reads "(e) A person who refuses or resists the taking of fingerprints under this section commits a class B misdemeanor".

9:29:16 AM

MR. GUANELI pointed out to Senator French that page 2, line 15, is what he has been speaking to.

9:29:58 AM

SENATOR FRENCH responded that the difficulty is that would still leave all crimes against persons, including misdemeanor assault. On page 2, line 15, it would be "the commission of a crime against a person" and that is misdemeanor assault, felony assault and so forth. He proposed a conceptual amendment that would leave police with the ability to prosecute uncooperative

witnesses to shootings, murders, attempted murders, misconduct in the first degree (drive-by shootings, reckless gunfire in populated areas) and leave out felony property crimes and misdemeanor assault.

9:30:43 AM

SENATOR GUESS objected because she did not understand the purpose of number 2 [Section 2, (b)(2)]. She said that when she read the section regarding photographs, everything seemed to be clear except number two. It says that a peace officer may temporarily detain a person "only as long as reasonably necessary to accomplish the purposes" and if they don't have ID it is very specific about what the officer is allowed to do. Then there is a very general statement that, if you detain someone, you can take photographs; but it doesn't state any specific purpose. She asked if someone could walk her through that section and explain why it is there and the way it is constructed.

9:31:58 AM

SENATOR BUNDE said he has ridden with the police and they use photographs regularly to help in investigations.

SENATOR GUESS asked whether the purpose of the photograph is to verify the identity of the person, or obtain an account of the crime as stated in Section 2, (3).

SENATOR BUNDE replied yes, that it is to obtain identification.

SENATOR GUESS said that it is not clear as it is written. It is clear that the police may take photographs, but it is not clear why.

SENATOR BUNDE clarified that the police are authorized to take photographs of a person only if he has not provided valid government-issued ID. He said that Mr. Guaneli mentioned that there should be an additional reference where it says "under this section"; perhaps a label on the subsection would help clarify it.

SENATOR GUESS asked Mr. Guaneli whether she is reading this incorrectly, or whether number 2 [Section 2, (b)(2)] on page 2, lines 26 through 28 should really be under number 3 [Section 2, (b)(3)]. If police are only authorized to take photographs of individuals if they don't provide a valid government-issued ID, that is not how the bill reads now, and it doesn't speak at all to taking pictures at the crime scene.

9:35:12 AM

MR. GUANELI responded the reason the bill allows photographs to be taken even if ID is shown, is that there may be other evidentiary reasons to photograph a person at a crime scene, such as documenting what the person looked like at the time, whether clothes were torn or dirty, whether the person was intoxicated etc. He said it didn't seem appropriate to restrict police from doing that if the person shows an ID. Subsection (b), although it allows the police to do certain things, also restricts the things that they are allowed to do.

SENATOR BUNDE interjected an example of a domestic violence assault incident in which the victim did not want a photograph taken, but it was needed to show the extent of the injuries. He felt that the police should be allowed to take photographs in cases like this, even though the witness is reluctant and the police know the victim's identity.

SENATOR GUESS conjectured that the purpose of number 2 is to be able to take photographs to support (a)(3), that is, to verify the identity of a person, or to obtain an account of the crime, and that Senator Bunde and Mr. Guaneli were referring to the second one, to obtain an account of the crime.

MR. GUANELI responded, if she was interpreting (a)(3) as not only what the witness tells police about the crime, but also what is visually conveyed, yes. He would want that interpretation to be very clear in the record before grafting (a)(3) onto subsection (b)(2). He said that the original thought when drafting (a)(3) was to find out what the witness can tell police about the crime. Gathering other evidence may be an appropriate thing to include there, and if it is not included, it needs to be very clear that is what the committee intends it to mean.

9:39:12 AM

SENATOR FRENCH said the committee seems to be segueing into a separate category of ideas and that seems to be tampering with evidence. Blood spatter on a pair of blue jeans is evidence. The police have the right to take a picture of that, or even take the blue jeans. Torn clothing, grass stains, all of that can be evidence of a crime. This bill is about identifying human beings at a crime scene for a later court proceeding, when police would ask them questions about what happened.

SENATOR BUNDE clarified that it is not necessarily for court proceedings but to further the investigation.

MR. GUANELI said although the police may be able to seize evidence that is in plain view, there may be things like facial bruises that police cannot seize without taking a photograph. One of the powers of the police that is recognized by the Alaska Court of Appeals, is to temporarily detain a victim of domestic violence. He related a particular case that illustrates the use of this power.

SENATOR FRENCH said that goes back to what Senator Guess was asking about, the different purposes listed on lines 19 through 21 of page 2, where "the temporary detention of the person is reasonably necessary to... protect a crime victim from imminent harm, or for other exigent circumstances". That is exactly right and the police can do that, but this bill expands the power of the police with respect to obtaining or verifying "the identification of the person," or "to obtain an account of the crime," as listed on line 20. Those are the problematic features and what the bill is really designed to do, because there is already case law for the authority to stop a crime victim to protect him from imminent harm, or for other exigent circumstances.

He said that the focus should remain on figuring out where and under what circumstances we should expand the power of the police to verify the identity of a person and obtain an account of the crime and, moreover, charge a person with a crime for failure to cooperate. He stressed that it is a coercive power the committee is granting through this bill and, while he is willing to grant it for murder, attempted murder, or misconduct 1, he is reluctant to grant it for lesser crimes.

[9:43:37 AM](#) at ease

[9:55:41 AM](#) call to order

SENATOR FRENCH said that he remains concerned that this bill expands police powers toward individuals who are not suspected of any wrongdoing and wants to be cautious.

[9:56:22 AM](#)

SENATOR FRENCH made a motion to amend, but withdrew it when Senator Guess reminded him that there was already a motion on the floor.

SENATOR FRENCH made a new motion to amend the bill as follows: On page 2, lines 14 and 15, change "the person witnessed or was at or near the scene of the commission of a crime" to add the word "felony" before crime and strike out "felony property crime under AS 11.46", leaving line 16 alone. The language would then read:

the person witnessed or was at or near the scene of the commission of a felony crime against a person under AS 11.41, or misconduct involving weapons under AS 11.61.190 or 11.61.195(a)(3);

CHAIR HUGGINS asked Mr. Guaneli what would be precluded under the law if the committee inserts the word "felony" in line 15.

MR. GUANELI said that, with respect to felony crimes under AS 11.41, crimes against persons, that would primarily exclude misdemeanor assaults including the vast majority of domestic violence cases. Specifically, it legislatively overrules an Alaska Court of Appeals opinion that says, when the police believe that there has been a victim of a misdemeanor domestic assault, they can stop the victim. Another consequence of the amendment is that serious property crimes that place persons at risk, such as arson, or shooting at the Alaska Pipeline, would not be covered under this bill. Admittedly, this leaves felony crimes against persons and the drive-by shooting incidents, which is what Chief Monegan is primarily focused on in Anchorage, but keeping in mind that the Alaska Supreme Court has ruled in line with this bill, there is a question of policy direction reflected in the amendment.

10:01:15 AM

WALTER C. MONEGAN III, Anchorage Police Chief, testified via teleconference. He spoke of a recent incident when a person in Fairbanks ran a front-end loader through the front of the jail in an attempt to break a prisoner out. In a case like that he would agree with Mr. Guaneli.

SENATOR FRENCH asked Chief Monegan if he thinks that running a front-end loader through the front of the Anchorage jail would give the police a reasonable suspicion that there had been a felony fear assault crime committed against one of the corrections officers or a prisoner.

CHIEF MONEGAN responded he would hope so. He said the police have a tendency to look at the worst-case scenario. If there is a shooting, they assume a felony and respond accordingly until

they rule it out, so he recognized Senator French's point that police would have the authority to obtain identification in that situation even without this bill. But because as all they might really have is destruction of public property, which does not fall under the statute, he would worry that the evidence they gathered by stopping witnesses might be suppressed.

CHAIR HUGGINS asked Chief Monegan if he could speak to felony property crimes being excluded.

CHIEF MONEGAN responded that the situation he just related does speak to that, but burglary is another example. Burglary is unlawful entry with the intent to commit a crime. If a suspect gets inside with criminal intent, but does not carry it out and has not displayed a weapon, while the intent was felonious, the act is a misdemeanor.

10:05:21 AM

SENATOR BUNDE asked Chief Monegan if it is possible that the damage done to property due to a meth lab would fall under the category of a felony property crime, giving police another way to bust that drug enterprise.

CHIEF MONEGAN said that it could be a handy tool, as there might be reckless endangerment issues associated with the fumes, or a possibility of explosion that would endanger other residents in the area.

SENATOR FRENCH asked Chief Monegan how often, in the examples he gave, do police run into uncooperative witnesses.

CHIEF MONEGAN said that is hard to answer. Sometimes everyone wants to help, but it only takes one uncooperative individual to make the job difficult, and there are always some people who don't want to get involved.

SENATOR BUNDE asked Chief Monegan if he could comment on the issue that Chair Huggins brought up about senior citizens who are afraid of retribution.

CHIEF MONEGAN said yes, he could see that happening.

10:08:18 AM

CHAIR HUGGINS called for questions.

CHIEF MONEGAN said he has a working draft before him and would be happy to answer questions.

10:08:38 AM at ease

10:09:05 AM call to order

SENATOR FRENCH said that he appreciated the comments from Senator Bunde, Mr. Guaneli and Chief Monegan. He summarized by saying that this bill was brought to the committee to deal with the problem of uncooperative witnesses in gang-related shootings in Anchorage; but it is being expanded quite a bit to gather information in criminal cases and the committee needs to remember that at the bottom of this bill is the power of the police to charge a witness, someone who has done absolutely nothing wrong, with a crime for not cooperating. That seems to be a broad and troublesome expansion of police power that should be undertaken only in the most serious of circumstances.

CHAIR HUGGINS objected.

CHIEF MONEGAN said that his working draft shows no amendment altering law enforcement's ability to take photographs and asked if that is correct.

CHAIR HUGGINS replied no, not at this time.

CHIEF MONEGAN said that's good, because the first thing the police do when they arrive at a scene is to take pictures of the crowd to capture evidence and to see if the same people show up at multiple scenes.

SENATOR THERRIAULT said that in fair answer to the question "are photographs allowed" at property crimes, police can still take crime scene photos, but they cannot detain individuals to take photographs, because if the person does not fit under Section (a), Section (b) can't be triggered.

10:12:45 AM

CHAIR HUGGINS asked the clerk to call the roll.

The clerk called the roll for the motion to adopt Senator French's amendment of lines 14 and 15.

The motion failed with 1 yea and 3 nays. Senator French voted yea and Senator Therriault, Senator Guess, and Chair Huggins voted nay.

SENATOR GUESS moved CSSB 3005(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried. There being nothing further to come before the committee, Chair Huggins adjourned the meeting at [10:14:05 AM](#).