

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 7, 2012

1:32 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator John Coghill

MEMBERS ABSENT

Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator Lesil McGuire

COMMITTEE CALENDAR

HOUSE BILL NO. 80

"An Act relating to self defense in any place where a person has a right to be."

- HEARD & HELD

SENATE BILL NO. 134

"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 80

SHORT TITLE: SELF DEFENSE

SPONSOR(S): REPRESENTATIVE(S) NEUMAN, FEIGE, LYNN, COSTELLO

01/18/11	(H)	PREFILE RELEASED 1/14/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	JUD, FIN
02/09/11	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/11	(H)	Heard & Held
02/09/11	(H)	MINUTE(JUD)
02/11/11	(H)	JUD AT 1:00 PM CAPITOL 120
02/11/11	(H)	Moved Out of Committee
02/11/11	(H)	MINUTE(JUD)
02/14/11	(H)	JUD RPT 4DP 1DNP 1NR
02/14/11	(H)	DP: KELLER, THOMPSON, LYNN, GATTO

02/14/11 (H) DNP: HOLMES
 02/14/11 (H) NR: GRUENBERG
 03/08/11 (H) FIN AT 9:00 AM HOUSE FINANCE 519
 03/08/11 (H) Heard & Held
 03/08/11 (H) MINUTE(FIN)
 03/30/11 (H) FIN AT 5:00 PM HOUSE FINANCE 519
 03/30/11 (H) -- MEETING CANCELED --
 04/04/11 (H) FIN AT 6:00 PM HOUSE FINANCE 519
 04/04/11 (H) Moved Out of Committee
 04/04/11 (H) MINUTE(FIN)
 04/05/11 (H) FIN RPT 5DP 3NR
 04/05/11 (H) DP: FAIRCLOUGH, T.WILSON, COSTELLO,
 STOLTZE, THOMAS
 04/05/11 (H) NR: GUTTENBERG, JOULE, DOOGAN
 04/09/11 (H) TRANSMITTED TO (S)
 04/09/11 (H) VERSION: HB 80
 04/11/11 (S) READ THE FIRST TIME - REFERRALS
 04/11/11 (S) JUD, FIN
 03/07/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 134

SHORT TITLE: CHILD SUPPORT AWARDS

SPONSOR(s): SENATOR(s) KOOKESH

01/17/12 (S) PREFILE RELEASED 1/6/12
 01/17/12 (S) READ THE FIRST TIME - REFERRALS
 01/17/12 (S) HSS, JUD
 02/06/12 (S) HSS AT 1:30 PM BELTZ 105 (TSBldg)
 02/06/12 (S) Heard & Held
 02/06/12 (S) MINUTE(HSS)
 02/15/12 (S) HSS AT 1:30 PM BUTROVICH 205
 02/15/12 (S) Moved CSSB 134(HSS) Out of Committee
 02/15/12 (S) MINUTE(HSS)
 02/17/12 (S) HSS RPT CS 2DP 2NR NEW TITLE
 02/17/12 (S) DP: DAVIS, EGAN
 02/17/12 (S) NR: MEYER, DYSON
 02/17/12 (S) FIN REFERRAL ADDED AFTER JUD
 03/07/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

REX SHATTUCK, Staff
 Representative Mark Neuman
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Introduced HB 80 on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Provided an overview of the current self defense law and answered questions related to HB 80.

BRIAN JUDY, Senior State Liaison
National Rifle Association - Institute for Legislative Action
(NRA-ILA)
Sacramento, California

POSITION STATEMENT: Testified in support of HB 80.

QUINLAN STEINER, Director
Public Defender Agency
Department of Administration (DOA)
Anchorage, AK

POSITION STATEMENT: Offered information related to HB 80.

DOROTHY SHOCKLEY, staff
Senator Albert Kookesh
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced SB 134 on behalf of the sponsor.

DAISY STEVENS, representing herself
Fairbanks, AK

POSITION STATEMENT: Testified in support of SB 134.

DIXIE BANNER, representing herself
Wasilla, AK

POSITION STATEMENT: Testified in support of SB 134.

MICHELLE BAYLESS, representing herself
Copper Center, AK

POSITION STATEMENT: Stated support for SB 134 if it helps kids.

NANCY MEADE, General Counsel
Alaska Court System
Anchorage, AK

POSITION STATEMENT: Testified on SB 134 and explained the review process under Court Rule 90.3.

JOHN MALLONEE, Director
Child Support Services Division (CSSD)
Department of Revenue (DOR)
Anchorage, AK

POSITION STATEMENT: Answered questions about child support as related to SB 134.

STACY STEINBERG, Chief Assistant Attorney General
Collections and Support Section
Civil Division
Department of Law
Anchorage, AK

POSITION STATEMENT: Provided information related to SB 134.

ACTION NARRATIVE

[1:32:41 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Senator Coghill and Chair French were present at the call to order. He stated that the committee did not have a quorum and would not take action on any legislation today.

HB 80-SELF DEFENSE

[1:33:30 PM](#)

CHAIR FRENCH announced the consideration of HB 80, "An Act relating to self defense in any place where a person has a right to be."

[1:33:42 PM](#)

REX SHATTUCK, staff to Representative Mark Neuman, a prime sponsor of HB 80, characterized the bill as the "no duty to retreat" legislation. He explained that HB 80 amends AS 11.81.335(b) by adding a new paragraph (5) to clarify a person does not have a duty to retreat and can instead apply deadly force in defense of self if he/she is anywhere he/she has a right to be. He noted that approximately 18 other states had already passed or were working on similar legislation.

CHAIR FRENCH noted that Lieutenant Dial with the Department of Public Safety (DPS), Brian Judy with the National Rifle Association, Quinlan Steiner with the Public Defender Agency and Anne Carpeneti with the Department of Law (DOL) were available to answer questions. He asked Mr. Shattuck if a particular incident in Alaska served as a catalyst for the bill.

MR. SHATTUCK relayed that a number of constituents and groups expressed interest in the issue after the question was raised in several cases in the Lower 48.

[1:39:54 PM](#)

CHAIR FRENCH reviewed the bill packet and observed that it contained an impressive amount of supporting material and messages from across the state. Promising that the committee would conduct a detailed examination of the self defense law, he emphasized that the current law was reasonable and that it was a misconception that the duty to retreat means that a person has to give up in the face of a criminal attack. He asked Ms. Carpeneti to provide an overview of the self defense law as it currently stands.

[1:41:18 PM](#)

ANNE CARPENETI, Assistant Attorney General representing the Criminal Division, Department of Law (DOL), said the first thing to understand is that self-defense is a defense which the state has to disprove beyond a reasonable doubt.

CHAIR FRENCH posed a hypothetical situation to clarify the meaning of that statement. A mother with two children is carrying groceries to her car and is beset by a robber in the parking lot. Believing the man is armed, she uses her own gun to shoot him. The district attorney's office has to screen that case and decide whether or not to accept a charge of homicide against the mother.

MS. CARPENETI added that the screening decision in that example would be not to prosecute the woman, because in Alaska the duty to retreat only applies when a person knows that he or she can retreat in complete safety to him or herself and others they are protecting.

CHAIR FRENCH summarized that the DA would make the decision not to prosecute because no crime had occurred. It was a lawful use of self-defense under current Alaska law.

MS. CARPENETI replied that is correct.

CHAIR FRENCH asked if Senator Coghill, for example, would be authorized to shoot and kill the attacker, assuming the woman was unarmed and he saw a gun in the attacker's hand.

MS. CARPENETI confirmed that he would not have the duty to retreat under that circumstance. If he had reasonable belief that the woman was in danger he could use deadly force to protect the woman and her children.

CHAIR FRENCH asked if in the second scenario the duty to retreat pertains to the victim and not so much to Senator Coghill. The issue is whether the victim can get away.

MS. CARPENETI confirmed that was correct.

CHAIR FRENCH read the current law under AS 11.81.335(b) "A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity..."

He adjusted the hypothetical to illustrate that every situation has to be analyzed. In this instance the woman is walking to her car and a man gets out of another car that is parked 20 yards away. The man has a gun. He asked what the obligation would be under that scenario.

MS. CARPENETI agreed that every situation is different and each has to be analyzed on its facts. If Senator Coghill had reasonable belief that there was deadly danger to that woman, he would have the right to use the defense of third parties in defense of others. Under that circumstance he would not have the duty to retreat.

[1:45:26 PM](#)

MR. SHATTUCK agreed with Ms. Carpeneti and highlighted that there are both objective and subjective considerations. He noted that Justice Oliver Wendell Holmes questioned how subjective a person needed to be when the objective justification was that there was a gun in your face.

CHAIR FRENCH agreed that Justice Oliver Wendell Holmes said there is no duty to retreat under certain circumstances. He said, "detached reflection cannot be demanded in the presence of an uplifted knife." That is common sense and the current law in the state of Alaska. Senator Coghill would not be expected to go through a calculated analysis of the situation. If he sees someone being beset by an armed robber, he can kill that robber and the Department of Law would not prosecute. If he were prosecuted, Senator Coghill would go to court with the legal advantage of the state not only having the burden of convicting him beyond a reasonable doubt, but also of disproving his self-defense claim beyond a reasonable doubt.

CHAIR FRENCH said he was going through this in detail because of the seeming misperception that people cannot already exercise

the right of self-defense. That is not the case; people in the state of Alaska have an absolute right to defend themselves.

1:48:40 PM

BRIAN JUDY, Senior State Liaison, National Rifle Association - Institute for Legislative Action (NRA-ILA), Sacramento, California, stated strong support for HB 80. He relayed that the sponsor suggested that he hold his testimony until the next hearing when the full committee and the sponsor could be present. He offered to answer questions as they came up during this hearing.

CHAIR FRENCH asked if he had any comment about what he'd heard today, and if the NRA had any good examples of an innocent person being prosecuted for homicide when a bill like this would have prevented such a prosecution.

MR. JUDY confirmed that the bill was not introduced based on any specific circumstance; it was brought on the philosophical discussion nationwide on the issue of self defense. He acknowledged that existing Alaska law provides that there is no duty to retreat if a person is justified and on premises they own, lease, reside, or work. However, the NRA's position is that if a person is out in public where they have a right to be and they are justified, they should not have to go through that mental exercise as to whether or not they can retreat with complete safety.

He urged caution in saying there is an absolute right to defend oneself. The prosecutor is going to consider whether the person was justified and whether the person could retreat with complete safety so the person in the circumstance has to consider that as well in deciding whether to employ deadly force.

1:53:59 PM

CHAIR FRENCH asked if the NRA had analyzed what it means to have a right to be in a particular place. For example, does a person that goes to Disneyland or the movies have a right to be there or are they there as a guest or at the permission of the corporate or business owner.

MR. JUDY replied the NRA's analysis would be that a person who is not trespassing and has the legal right to be in a place would be covered under the provisions of HB 80. He acknowledged that private property owners have a right to impose limitations on the use of their property, and that the limitations are

different when the private property is closed to the public as opposed to private property that is open to the public.

CHAIR FRENCH asked the public defender if passage of HB 80 would essentially remove the duty to retreat from Alaska law.

1:57:05 PM

QUINLAN STEINER, Director, Public Defender Agency, Department of Administration (DOA), advised that there would be a remaining duty to retreat in situations like trespass where a person did not have a legal right to be there.

CHAIR FRENCH asked if he would agree that a person who was in a parking lot that was closed to the public for the night would not have a legal right to be in that parking lot.

MR. STEINER responded that if someone were charged under that circumstance there would probably be litigation about whether or not the person had the duty to retreat.

CHAIR FRENCH observed that the first question is whether or not the person had a legal right to be in the parking lot, and once that is resolved it would be clear whether or not the person had a duty to retreat.

MR. STEINER responded that in the instance where somebody has used deadly force, the preliminary question is whether or not he or she had that authority. He opined that it's in that regard that HB 80 may have no impact. Under the statute the two events are theoretically mutually exclusive. If a person can retreat in total safety, he or she does not have the authority to use deadly force. If a person has the authority to use deadly force, arguably there are no circumstances under which he or she could retreat in total safety.

CHAIR FRENCH asked if the Public Defender Agency had a position on the bill.

MR. STEINER said no.

SENATOR COGHILL said he will be looking at the issue from two perspectives. One is how the courts will interpret the statute and the other is how the public will interpret their rights under the statute.

CHAIR FRENCH agreed that people will look to the law for direction and it should be as clear as possible.

[2:02:25 PM](#)

CHAIR FRENCH announced he would hold HB 80 in committee.

SB 134-CHILD SUPPORT AWARDS

[2:02:59 PM](#)

CHAIR FRENCH announced the consideration of SB 134, "An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

[2:03:19 PM](#)

DOROTHY SHOCKLEY, staff to Senator Kookesh, introduced SB 134 by explaining that it puts Court Rule 90.3 into statute, and changes how child support is allocated. The current percentage-of-income model that considers just the income of the non-custodial parent will change to an income share model where both parents' income is used to calculate child support. She noted that a section was removed that ordered a grandparent to pay child support. Sections dealing with the support order form and the commentary were also removed.

She explained that the bill came about due to frustration with the child support review process under Court Rule 90.3, because it appeared that people did not have a voice. In 2008 she was told that the best way to change the process was to put the rule into statute.

MS. SHOCKELY relayed that the sponsor's office receives a number of calls from people who do not mind paying child support, but feel there are problems with the system. This legislation seeks to give people a voice, be fair, and provide for a child's best interest.

[2:05:42 PM](#)

SENATOR COGHILL asked for an expanded discussion about the income share model for determining child support. He said he was also interested in looking at ways to include non-monetary things in child support orders. For example, there should be a way to place a value on a contribution of hunting or fishing efforts.

[2:07:27 PM](#)

DAISY STEVENS, representing herself, Fairbanks, AK, said she always felt that it was unfair for child support to be paid by just one parent. She cited the cases of her two sons and stated

full support for changing the standard for calculating child support to include the income of both parents.

[2:11:19 PM](#)

DIXIE BANNER, representing herself, Wasilla, AK, testified in support of SB 134. She described being penalized in the child support calculation for being a noncustodial parent, and expressed pleasure at not being in the system any longer.

[2:14:38 PM](#)

MICHELLE BAYLESS, representing herself, Copper Center, AK, expressed sympathy with the previous testimony and said she supports SB 134 if it helps kids. She discussed single parenthood and that noncustodial parents were not required to share the burden.

[2:19:28 PM](#)

CHAIR FRENCH asked Ms. Shockley if she consulted Legislative Legal about Sections 4 and 5. Section 4 repeals Court Rule 90.3 putting it in statute, and Section 5 addresses the nonapplicability of a two-thirds vote requirement.

MS. SHOCKLEY replied Legislative Legal indicated the sections were correct and that they discussed the questions with both the court and the Department of Law.

CHAIR FRENCH asked Ms. Meade to explain how changes to Court Rule 90.3 are crafted and how an affected member of the public can get his or her concerns heard.

[2:20:34 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, Anchorage, AK, explained that in compliance with federal regulations, the state reviews its child support guidelines every four years. The Alaska Supreme Court appoints an eight member committee that meets for about 18 months prior to the four-year deadline to consider whether the Court Rule still results in fair child support awards. She described two ways for the public to comment. At the beginning of the process the meeting is noticed in 32 newspapers statewide and in every courthouse. Comments are submitted and the review committee reads them all before recommending any changes. At that point the proposed changes are noticed and comment is again solicited and thoroughly reviewed. The committee then makes a final decision about any changes. She noted that the process also provides an opportunity for the public to testify telephonically. In addition to the scheduled review, the court rules attorney will consider written and oral

suggestions about court rule changes at any time. Those suggestions go to the standing committee on family rules and could eventually go to the Alaska Supreme Court.

2:25:28 PM

CHAIR FRENCH asked if the Alaska Supreme Court reviews the proposals or if the review committee has the authority to promulgate the rule change.

MS. MEADE replied rule changes absolutely must be promulgated by the court. The review committee prepares a report of recommended changes and the rules attorney, acting as the intermediary, presents the report to the five members of the Alaska Supreme Court along with background information that includes all the public comments. The court then decides whether or not to accept the recommendations. She noted that the last review committee asked the court for interim guidance as to the idea of adopting the income share model, and the court's suggestion was to stick with the percentage of income approach and avoid unnecessary work.

CHAIR FRENCH summarized that the idea was dropped when the court expressed little interest in switching to an income share model.

MR. MEADE added that the request for guidance was accompanied by a notebook of thoughts on the two approaches and the relative fairness of each one. She discussed the issue of fairness and that it was a matter of perspective unless there was empirical evidence that one model was more fair.

CHAIR FRENCH asked what model the court uses when custody is shared equally between the parents.

MS. MEADE explained that when custody is shared 50:50, the current rule calls for a calculation of each parent's income with an offset payment that accounts for the difference. In cases where a parent has less than 30 percent custody for one child, the current rule calls for that parent to pay 20 percent of their net income to the custodial parent.

2:31:50 PM

CHAIR FRENCH observed that there appears to be ample public input.

SENATOR COGHILL asked her to elaborate on the court's discussion and suggestion to stick with the percentage of income model because of fairness.

MS. MEADE clarified that the court concluded that the percentage of income approach resulted in child support awards that were appropriate.

[2:33:45 PM](#)

JOHN MALLONEE, Director, Child Support Services Division (CSSD), Department of Revenue (DOR), offered to answer questions.

CHAIR FRENCH asked how many child support orders CSSD monitors.

MR. MALLONEE replied the division was actively involved in approximately 48,000 child support cases, but that did not represent the full universe because some do not go to CSSD for enforcement.

CHAIR FRENCH asked why a child support order would or would not fall under the jurisdiction of CSSD.

MR. MALLONEE explained that one of the parties can ask the court to give the case to CSSD for enforcement or a party can approach CSSD directly asking it do anything from establish paternity to establish a court order to enforce a court order. The agency is able to do all these things administratively.

CHAIR FRENCH asked if he had reviewed SB 134.

MR. MALLONEE said yes, and their calculations showed that when the combined income is up to \$31,000 or \$32,000, the noncustodial parent tends to pay more under SB 134 than under the current Rule 90.3. The reverse is true when the combined income is above \$31,000 or \$32,000; the noncustodial parent tends to pay less under SB 134 than the current Rule 90.3. He clarified that would not apply in every situation.

CHAIR FRENCH asked if he had analyzed what would happen to current awards if SB 134 were to pass.

MR. MALLONEE explained that because it would be a material change of circumstances, CSSD estimates that more than 20,000 of the current orders would be subject to modification.

CHAIR FRENCH asked what the workload is per month.

[2:39:26 PM](#)

MR. MALLONEE replied the current staff of 14 does about 3,000 modifications in a year.

CHAIR FRENCH asked if the bill would potentially create seven years of work.

MR. MALLONEE said yes; the fiscal note asks for 24 temporary and 5 permanent positions to accommodate the modifications and the added work to get information from two parties rather than one.

CHAIR FRENCH asked if this would affect how the division meets the federal guidelines for child support.

MR. MALLONEE answered no; it actually provides more opportunity to meet the federal requirements because each case is subject to modification.

SENATOR COGHILL asked how CSSD makes things fair when the noncustodial parent is actually the one caring for the child.

MR. MALLONEE explained that the agency can change an order that was established administratively, but cannot make changes to orders produced by the court. Those cases have to go back to the court.

SENATOR COGHILL asked how long it takes to change custody.

MR. MALLONEE replied it should not take no longer than 30-45 days to change an administrative order, but it takes longer than that to get a new custody order from the court.

[2:43:46 PM](#)

STACY STEINBERG, Chief Assistant Attorney General, Collections and Support Section, Civil Division, Department of Law, Anchorage, AK, said she was in charge of the section that advises CSSD and represents it in any court actions.

CHAIR FRENCH asked if she had any general comments on the bill or the previous testimony.

MS. STEINBERG discussed the three formulas for calculating child support under Rule 90.3 in cases of primary custody, shared custody, and divided custody. The primary formula takes a percentage of the noncustodial parent's net income. The shared formula is a more income share approach because both parents' income and the percentage of time each parent has the child is considered. The divided formula is almost a pure offset approach. It applies when each parent has primary custody of at least one child.

CHAIR FRENCH asked if she had any comments on the relative fairness of one system compared to the other.

MS. STEINBERG said no, but DOL did review the bill looking at the legal requirements under federal law to ensure that CSSD continues to receive federal funds.

[2:47:31 PM](#)

SENATOR COGHILL asked if the formulas easily accommodate changing family dynamics.

MS. STEINBERG confirmed that administrative orders can be changed more quickly than court orders, but that it is incumbent on one or both parents to notify CSSD of a change in custody and ask for the appropriate adjustment. If the order is produced by the court, one or both parents have to go back to the court to get a change of custody. As part of the process the court matches the support amount to the custody arrangement. Court cases move more or less quickly depending on the situation.

SENATOR COGHILL said he assumes that would not change if the bill were to become law.

MS. STEINBERG said that's correct; the parents would still have to advise the court of the custody change and the court would have to issue a new custody and support orders. Returning to the fairness issue, she suggested that it would be necessary to look at the calculations to see if it was more fair to look at both parents' income.

[2:50:53 PM](#)

CHAIR FRENCH asked if she had any views on Sections 4 and 5. The repeal of Rule 90.3 and the non-applicability of the two-thirds vote requirement.

MS. STEINBERG replied she had not looked at the issue specifically, but her understanding was that those two sections were correct.

CHAIR FRENCH said he would check on that a bit more.

SENATOR COGHILL said he looked forward to getting more information on the non-applicability section because the constitution says two-thirds vote is necessary for the Legislature to make changes.

CHAIR FRENCH said he'd focus on that as well. He asked Ms. Shockley if she had any concluding remarks.

[2:51:52 PM](#)

MS. SHOCKLEY commented on the 2008 review process and relayed her dismay that just four or five people attended the statewide hearing that lasted just 30 minutes.

SENATOR COGHILL discussed the fiscal impact, the possibility of putting the Rule 90.3 in statute without changing the current methodology, and the idea of adding enforcement resources to help people who feel they've been treated unfairly.

MS. SHOCKLEY said the legislation that was introduced three years ago put the rule into statute and did not change the model. At that time 35 states used the shared income model. Although every situation is different, there are cases where it is more fair. She cited an example.

CHAIR FRENCH held SB 134 in committee.

[2:59:51 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:59 p.m.