

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 11, 2014

8:06 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Lynn Gattis
Representative Shelley Hughes
Representative Doug Isaacson
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Charisse Millett

COMMITTEE CALENDAR

HOUSE BILL NO. 366

"An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."

- MOVED CSHB 366(STA) OUT OF COMMITTEE

HOUSE BILL NO. 235

"An Act requiring the Alaska Public Offices Commission to maintain the confidentiality of certain proceedings, documents, and information."

- MOVED CSHB 235(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 366

SHORT TITLE: INVOLUNTARY COMMITMENT

SPONSOR(S): REPRESENTATIVE(S) PRUITT

02/26/14	(H)	READ THE FIRST TIME - REFERRALS
02/26/14	(H)	STA, JUD
03/11/14	(H)	STA AT 8:00 AM CAPITOL 106

BILL: HB 235

SHORT TITLE: CONFIDENTIALITY OF APOC COMPLAINTS

SPONSOR(s): REPRESENTATIVE(s) HIGGINS

01/21/14 (H) PREFILE RELEASED 1/10/14
01/21/14 (H) READ THE FIRST TIME - REFERRALS
01/21/14 (H) STA, JUD
03/11/14 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE LANCE PRUITT

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HB 366.

MORGAN HOPSON, Staff

Representative Lance Pruitt

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 366 on behalf of Representative Pruitt, prime sponsor.

KATHLEEN STRASBAUGH, Attorney at Law

Legislative Legal and Research Services

Legislative Affairs Agency

Juneau, Alaska

POSITION STATEMENT: Answered questions as the drafter of HB 366.

NANCY MEADE, General Counsel

Alaska Court System

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 366.

SHERRE BAKER, Index Liaison Specialist

National Instant Criminal Background Check System (NICS)

Federal Bureau of Investigation (FBI)

(No address provided)

POSITION STATEMENT: Offered information regarding the FBI's practices during the hearing on HB 366.

JAKE MCGUIGAN, Director

Government Relations/State Affairs

National Shooting Sports Foundation (NSSF)

(No address provided)

POSITION STATEMENT: Testified during the hearing on HB 366.

MELISSA RING, CEO
Alaska Psychiatric Institute
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 366.

REPRESENTATIVE HIGGINS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 235.

THOMAS STUDLER, Staff
Representative Pete Higgins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 235, on behalf of Representative Higgins, prime sponsor.

PAUL DAUPHINAIS, Executive Director
Alaska Public Offices Commission (APOC)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 235.

ACTION NARRATIVE

[8:06:19 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:06 a.m. Representatives Keller, Isaacson, Gattis, Hughes, and Lynn were present at the call to order. Representative Kreiss-Tomkins arrived as the meeting was in progress.

HB 366-INVOLUNTARY COMMITMENT

[8:06:42 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 366, "An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."

[8:07:00 AM](#)

REPRESENTATIVE LANCE PRUITT, Alaska State Legislature, as prime sponsor, introduced HB 366. He said Alaska is a state where individuals have a pride in ownership of guns and protect their Second Amendment right to bear arms, so there may be some concern about a bill that proposes to place a restriction on people's ability to purchase a weapon. He explained that the idea behind the bill came from the National Shooting Sports Foundation, which he indicated comprises gun manufacturers. He related that when he was originally approached to sponsor the legislation, he spent six weeks considering it to fully understand the intent behind it and to ensure that it would not infringe upon Alaska's gun ownership right. He said in discussing the bill with others, he was told that the idea is an understandable and a pragmatic approach to addressing current issues.

[8:08:52 AM](#)

REPRESENTATIVE PRUITT stated that under HB 366, Alaska would be allowed to communicate limited information, regarding individuals who have been involuntarily committed for 30 days, to the National Instant Criminal Background Check system (NICS) database. It would not allow the reason for the person's committal to be revealed. The bill also outlines an important process by which to have the information removed, which is a key component on which Representative Pruitt said he worked with the National Rifle Association.

[8:10:00 AM](#)

REPRESENTATIVE PRUITT said the Federal Firearms License (FFL) dealers would be protected under HB 366, because "it's another layer to really assist them in making sure that they're not selling guns to ... an individual that might not necessarily need it." He said Alaska's process for involuntary commitment is detailed and includes court hearings.

[8:11:59 AM](#)

MORGAN HOPSON, Staff, Representative Lance Pruitt, Alaska State Legislature, presented HB 366 on behalf of Representative Pruitt, prime sponsor. She stated that the proposed legislation pertains specifically to the limited transmittal of information from the courts to the Department of Public Safety (DPS) and the NICS. She said this database informs the FFL dealers whether to proceed with, delay, or deny a transaction with a customer

wishing to purchase a firearm. She said Alaska currently has only one person listed in the NICS database who is restricted from firearm ownership for mental health reasons. She related that Texas has 217,582 mental health records in the database. She indicated that 25 other states have implemented policies for transmittal of these records.

MS. HOPSON stated that under current federal law, FFL dealers could unknowingly sell firearms to a person who is disqualified from a firearm [because the person's name is not in the system]. She said in 2003, [FFL dealers] in Alaska submitted 93,405 [transaction] inquiries into the NICS, which is 127 inquiries to 1,000 residents - second only to Kentucky.

MS. HOPSON stated that under HB 366, the information that would be transmitted would be very limited; it would include the person's name, date of birth, birthplace, and social security number. She said all of that information would be transmitted "if known," which she indicated was one of the factors that was included in response to the bill sponsor's collaboration with the court system. She said there is a committee substitute that reflects other changes recommended by the courts. She said the bill would also include an appeal process so that the court could reverse its decision if the person was found later not to be suffering from a mental illness and therefore was deemed fit to carry a firearm. Ms. Hopson said such a reversal would require a great deal of scrutiny and a preponderance of the evidence. She stated, "In some other states, these decisions can come from a department," but "here in Alaska, these would all be full-dress hearings in a court."

[8:16:53 AM](#)

REPRESENTATIVE ISAACSON asked which section of the proposed legislation relates to a reversal of a decision, and he asked how the person would get the initial decision expunged from the record.

MS. HOPSON replied that the records are sealed and made confidential, rather than expunged. She said that is misrepresented in statute. She said, "So, one thing that we did when we were going through this is look at those places where that's misstated." Ms. Hopson said the language pertaining to reversal of decision is found in Section 4. She stated, "It looks at the ability of the reviewing court to consider the circumstances de novo - much after the fact - but there's also

an appeal process that can happen directly within the original proceedings."

[8:18:29 AM](#)

REPRESENTATIVE PRUITT deferred to the bill drafter to expound upon the answer.

[8:18:50 AM](#)

REPRESENTATIVE ISAACSON questioned what steps a person would have to take to clear his/her name.

REPRESENTATIVE PRUITT deferred to someone from the court system.

[8:19:44 AM](#)

REPRESENTATIVE PRUITT, in response to Chair Lynn, said if someone is involuntarily committed, it could be a result of a person having voluntarily gone in to a hospital, for example at the urging of a family member, and then the hospital says the person should remain. He said in the past people could be locked in an institution and the key would be thrown away, but that is not done today. There is a concerted effort to return people to society, which is why there is a 30-day involuntary commitment period. He indicated this is how a case he knows about occurred, but said he is sure there are multiple ways in which a person could end up with an involuntary commitment.

CHAIR LYNN asked at what point in the process a report would be made to the NICS.

MS. HOPSON answered, "It would only be official after the final adjudication was handed down from the judge." She indicated that during the period of time in which a person is being assessed, he/she would not be allowed to possess a firearm. The person could also be cleared of "whatever the consideration was" and not be committed. She stated, "None of that would ever go to NICS." She relayed her understanding that in Anchorage some adjudications are handled by a "master," who then passes on a recommendation to a judge; however, "the final recommendation is the point at which this registers." She said this issue is one of the issues that was clarified at the behest of the court system, which was looking for a more definitive point at which records would be transmitted.

[8:24:29 AM](#)

REPRESENTATIVE HUGHES asked for an explanation regarding the aforementioned 30-day period.

MS. HOPSON answered that 30 days is the minimum amount of time being involuntarily committed "that would trigger them for this situation."

REPRESENTATIVE HUGHES asked Ms. Hopson to confirm that there are involuntary commitments less than 30 days, which would not trigger the transfer of the records.

MS. HOPKINS stated that was her understanding.

REPRESENTATIVE HUGHES offered her understanding that although Texas has over 200,000 records in the system, it has not enacted legislation - only eight states have. She asked Ms. Hopson to confirm that Alaska needs "to change statute in order to do that," but some other states were able to just transfer the records without changing statute.

MS. HOPKINS responded that there are 25 states that have some sort of transmittal process. Some states transfer to a state database, while others transfer directly to the NICS. She said actually the number is "a little higher than 25 states."

[8:26:33 AM](#)

REPRESENTATIVE PRUITT offered his understanding that the eight states to which Representative Hughes referred are those that contribute nothing to the NICS, and he said Alaska is one of the eight.

REPRESENTATIVE HUGHES observed that some states are transferring records to the NICS without having enacted legislation. She asked the bill sponsor if it was correct to assume that those states did not need to enact legislation, but that Alaska would need to do so.

REPRESENTATIVE PRUITT, regarding the 30-day involuntary committal period, explained there is a provision under current statute requiring closed hearings, and the only way that information can be released is if the family [of the person being involuntarily committed] determines it can be made public. He indicated that a slight change is necessary in the statute in order for a limited amount of information to be released to the

NICS database, based on the final adjudication of the individual.

REPRESENTATIVE HUGHES expressed concern about sealing records rather than expunging them, and asked the bill sponsor to explain why the records are not being expunged.

REPRESENTATIVE PRUITT deferred to Nancy Meade of the Alaska Court System.

[8:29:54 AM](#)

REPRESENTATIVE KELLER asked the bill sponsor if, given the choice, he had a preference between expunged and sealed.

REPRESENTATIVE PRUITT explained that it was not until he began considering how a person's record could be cleared, should he/she be judged by the courts to once again be eligible to carry a firearm, that any focus was given to the ability to remove the individual's name from the database. He deferred to Ms. Meade for the answer as to what takes place currently.

REPRESENTATIVE KELLER requested that the bill drafter clarify the reason for the language in Section 3.

[8:33:07 AM](#)

KATHLEEN STRASBAUGH, Attorney at Law, Legislative Legal and Research Services, Legislative Affairs Agency, directed attention to the proposed language of Section 3(2), and indicated that [AS 47.30.850] seemed to be the best vehicle, not only for providing a method for someone to ask the court to seal his/her record, but also to "ask ... for the process that's in the next subsection, which is a new subsection." She said the decision about whether to remove expunging or sealing was at the request of the court, because the court has rules about that. She deferred to the court for further information.

REPRESENTATIVE KELLER questioned who the courts contacted.

MS. STRASBAUGH deferred to the bill sponsor.

REPRESENTATIVE KELLER offered his understanding that under current statute, "you can move to have all court records expunged." He said if that is not the case, it raises the question as to whether the records will be sealed.

MS. STRASBAUGH said AS 47.30.850 is the statute under which the sealing of records is requested, while AS 47.30.851 [in Section 4 of Version 0] is "the process for [indisc. -- paper shuffling 8:35:05] disability."

[8:35:31 AM](#)

NANCY MEADE, General Counsel, Alaska Court System, responded to prior questions. She confirmed that there are commitments of durations other than 30 days. She relayed that 3-day commitments are the most common, with up to approximately 2,500 being filed each year, which she indicated is an evaluation period. She said the master in Anchorage, or judges in other locations that do not have masters, consider the evidence and the evaluations provided by the medical facilities and determine whether a longer-term commitment is appropriate. She said there can be 30-day and 90-day commitments, and the proposed legislation would require the court to report only those commitments 30 days and over to DPS. She said there are only about a couple hundred of those filed per year, half of which are granted.

[8:36:54 AM](#)

MS. MEADE, regarding expungement versus sealing, clarified that under existing statute there already exists an option for both. She said the language that allows the court to order either expungement or sealing is found in Section 3, lines 16-18 [of the original bill version]. She said the statute is rarely used by anyone, because mental health commitment cases are confidential. Confidential records are available only to the parties, attorneys, the judge, and court personnel for case processing purposes. She said a person can move to have his/her record sealed or expunged under this statute when discharged from a treatment facility or when their petition for commitment is denied. She said the courts order sealing when it is requested, rather than expungement. The definition of sealing is much more restrictive and confidential; sealed records are accessible only to the judge and someone with a court order, not to assistants, clerks, or anyone else. She said sealed records are kept sealed forever; they are not imaged onto microfiche, like many other records are after a certain retention period.

MS. MEADE explained that the reason records are not expunged has to do with process. She explained that the petitioners' purposes are fully served by sealing, because "those cases essentially disappear." If expungement was used, all the

documents related to the issue would have to be shredded. She said, "We don't do that just because of the sort of philosophy that something about what happened ought to be retained for some possible reason; that destroying records is contrary to most court policies." She reiterated that sealed records are sealed forever, and said after a case is over "even a judge doesn't have a reason to go back." She said, "That's the reason that the statute allows for either, but typically we don't expunge." She recommended deleting references to expungement in the proposed legislation. She remarked that the court does not have a procedure for shredding court records, which is a reason it typically orders sealing. In response to Representative Keller, she offered her understanding that the court has never order expunging.

[8:40:55 AM](#)

REPRESENTATIVE ISAACSON offered his understanding that Ms. Meade had said the court could expunge if it had procedures to do so. He asked whether it would be the legislature or the court that would be responsible for developing those procedures.

MS. MEADE said if there was a statute that said the court must expunge "X," then the court would develop procedures to do so. In response to a follow-up question, she said current statute allows the court the option of whichever method it considers appropriate, and she reiterated that the court has chosen to seal records for archival purposes.

REPRESENTATIVE ISAACSON asked Ms. Meade if she was saying that the phrase "whichever the court considers appropriate under the circumstances" should be deleted from the original bill. He talked about how some records get leaked, and asked if the legislature needs to take steps to ensure the option of expungement if it thinks some records need to be destroyed.

[8:43:27 AM](#)

MS. MEADE answered that it would be up to the legislature to determine if some records should be destroyed; however, she stated that "sealing does accomplish all the purposes of expungement." She said if the legislature did pass a statute related to expungement, then the court system would implement corresponding procedures.

[8:44:00 AM](#)

CHAIR LYNN asked if the issue of sealing and expungement affects the issue of reporting to the NICS.

MS. MEADE answered that she does not think it does, because "that statute has existed for quite a while and is available to folks right now who are released from a treatment facility or whose petition for involuntary commitment was denied." She reemphasized the confidential nature of sealing records, and she ventured that because of that, people may not see the need to "go to the next step." In response to a follow-up question, she opined that the issue of sealing and expungement does not "go to the heart of the bill," but said it would be up to the bill sponsor to determine whether he believed the issue to be one of the crucial aspects of the bill.

[8:44:54 AM](#)

REPRESENTATIVE ISAACSON asked what happens to documents when they are expunged.

MS. MEADE answered that she thinks that is something the court would have to work out; however, she ventured that expungement would be "a step beyond sealing."

REPRESENTATIVE ISAACSON explained the base of his concern is how someone gets rid of a record. He reiterated that private information tends to leak out. He related that a man came to his office who was involved in a worker's compensation claim and other people's medical records were being sent to him. He said he would like to know if expunge means to destroy, because if it does not, then he questioned why there would be an option for expungement or sealing. He opined that if the intent is to get rid of a record, then it should be destroyed. Representative Isaacson said he thinks this issue does pertain to the heart of the matter, because if a decision can be made to remove someone's information from the NICS, then there should be a way to ensure the name does not get back in the system, unless by a new circumstance.

[8:48:15 AM](#)

CHAIR LYNN commented on the possibility of records being expunged at the court level but still existing in the NICS.

REPRESENTATIVE ISAACSON said a person's inalienable rights are removed when he/she is involuntarily committed. He expressed

concern that if there is a reversal of that commitment, that record should not show up again.

MS. MEADE reemphasized that sealing records makes them highly confidential, and she related that the court has not had breaches of sealed documents. She said she understands Representative Isaacson's concern that that could happen. She said Section 3 allows for expunging or sealing in two situations: when a person is discharged from a treatment facility or when there is a court order denying the petition for commitment. She said it is not tied to Sections 4 and 5, regarding relief of disability action and the report to the NICS. She stated that when a person is released or has a petition denied, there are other in-state governments that have those records, for example, the API, the public defender that is appointed, and other attorneys that are involved in the involuntary commitments. She characterized the records held elsewhere as tendrils, and said if the court expunged its records, for example by burning or shredding them, there could be an issue later on if a public defender, for example, wanted to "go back." She opined that having the records sealed instead of expunged is "helpful to the entire process for the future."

REPRESENTATIVE ISAACSON offered his understanding that Ms. Meade was saying that there could be a problem expunging some records and not others; therefore, it is better to "leave it as sealed," which he said "speaks to the CS."

[8:51:49 AM](#)

REPRESENTATIVE HUGHES offered her understanding that Ms. Meade said the courts currently have the option of expungement or sealing, but that she does not see that "here." She said a youth who is suicidal could be involuntarily committed and end up healthy as an adult. She expressed concern about records being leaked, although she said she was happy to hear Ms. Meade say that courts have a good record [of keeping records confidential]. She ventured that it is paper records that are being kept, and she remarked upon the amount of room that must take. She asked if currently a person can request that his/her records be expunged or sealed, and what would happen without procedures in place. She asked if records that were sealed have ever been unsealed, and, if so, what the process is for doing so.

[8:54:11 AM](#)

MS. MEADE reiterated that the language giving the court the choice occurs on page 3, lines 16-18. She said there is a strict difference between the courts' definition of "confidential" and "sealed." The records relating to mental health are confidential, and confidential records are kept in separate envelopes with fluorescent marking, and don't appear in court view. About two years after a case is closed, the confidential records are sent to the administrative archive section for imaging. She said confidential files can be imaged, which is different from being sealed. She stated, "This statute gives the person who's the subject for a petition for mental commitment the option to come in to the court and have it sealed. Sealed is much more restrictive." She said a sealed record is taped and retained in paper form in perpetuity. It is rare that documents are sealed, and it is burdensome for the court to seal records, but it is done upon request.

MS. MEADE related that the process for getting a sealed document opened falls under Administrative Rule 37.6 and involves a judge's consideration of the heightened sense of privacy under confidentiality versus the requestor's reason for accessing the case. One consideration may be the passage of time, for example, 20 years have passed and the case is in the public's interest. She emphasized that a petition to access a sealed document would be extremely rare. She ventured that "there would not be one a year."

REPRESENTATIVE HUGHES recollected that Ms. Meade had said that a person could request that a record be sealed, but questioned whether a person could request that a record be expunged.

MS. MEADE responded, "Well, they can use the statute and say, 'Can I have it sealed or expunged,' and the court, as a matter of practice, can order sealing. Again, I'm going to say there's a handful of those a year."

[8:58:00 AM](#)

REPRESENTATIVE KELLER offered his understanding that the sponsor's concern is for there to be an appeal process to ensure that a person's record "didn't stay in there." He indicated that the drafted bill includes content that does not directly pertain to the intent of the sponsor, and he questioned how that happened. He recollected that [Ms. Meade] had indicated that AS 47.30.850, [in Section 3 of the proposed committee substitute], "goes with" AS 47.30.851, [in Section 4]. He stated that AS 47.30.851 says nothing about sealing or expunging; it pertains

to "relief from records." He asked, "Is relief from records equal to sealing?"

[8:59:36 AM](#)

MS. MEADE clarified what she had said was that Sections 3 and 4 do not go together; Section 3 has been on the books for a while now, while Section 4 would be a brand new court process. She further clarified that Section 3 does not say that a person can get his/her records expunged if he/she has received the relief from disability under Section 4. Ms. Meade recollected that the bill sponsor's office had contacted her to ensure she had seen the bill and thought what it proposed was doable by the court system. She said after talking to a staff member who deals with mental commitments, she put forth suggestions for improvement. She continued as follows:

For example, where the court must immediately transmit certain information to the Department of Public Safety, I pointed out the practical problem that ... the prior version had said the court must immediately transmit the person's name, date ... of birth, social security number, I pointed out we don't always know it. Sometimes the folks that are involuntarily committed are in not such good shape, might not have family members, [and] may be living on the streets, for example. So, that was a comment that I brought up to the sponsor's staff and realized, well, all we can do is report things we know, so, for example, the phrase, "if known" was added to the bill; that makes it that we can comply to the extent possible. So, those are the sorts of things that I brought up, making sure that there was a triggering event that after which the court must immediately transmit, because there are stages to the involuntary commitment.

When it came to this section, I mentioned to the sponsor that ... as long as you're in there, you should know the court has not historically expunged. It says "expunged or sealed", and it might be plainer to have the statute reflect what can be done. And ... the sponsor's office put that change into the CS. Again, that is not closely related to the intent of the bill, and it is up to you whether you want to have that changed in Section 3. So, that's how the process worked.

9:02:25 AM

MS. MEADE stated that during the process of involuntary commitment, the police come to help handle a person who may be out of control, and they bring the person to the Alaska Psychiatric Institute (API) or another facility for evaluation. Initially, a determination is made whether or not the person needs evaluating, and the person can be involuntarily committed for that three-day evaluation period, during which doctors and psychiatrists become involved. After that, an assessment is made, and the person is appointed a lawyer if he/she cannot afford one, and the case is brought forth to a judicial officer, who decides whether a longer-term commitment is appropriate. Ms. Meade offered her understanding that under HB 366, it would be only when the judicial officer makes a determination that a 30-day or longer commitment is required that the court would be required to report to DPS.

MS. MEADE stated that Section 4 would be new statute, and should be viewed as a relief procedure rather than an appeal procedure. Under Section 4, long after a person has been involuntarily committed and is recovered, he/she could come back to the court and say, "I have this thing going on with DPS and NICS, and I want to be relieved from it." Ms. Meade ventured that a good period of time would have had to pass, so that the person could prove he/she was no longer a threat to public safety. She said the proposed statute specifically spells out what the court could consider in determining when it could grant relief from the person's disability, which she explained means the person's inability to purchase a firearm through the NICS. She said she did not see anything about sealing or expunging in Section 4.

9:05:30 AM

REPRESENTATIVE ISAACSON asked if the court would appoint an attorney to a person who sought the relief proposed under Section 4, if that person could not afford an attorney.

MS. MEADE answered she did not think so. She explained that indigents that are involuntarily committed, as well as people who are accused of crimes and whose defense is [that they are] mentally incompetent to stand trial, can be appointed a public defender; however, she offered her understanding that years later, when the person comes to seek the relief from disability under Section 4, there would be no attorney appointed.

[9:06:56 AM](#)

REPRESENTATIVE GATTIS expressed concern about the length of time someone would have to wait to be deemed competent, even if it was someone who just had a chemical imbalance that was fixed right away.

[9:08:27 AM](#)

MS. MEADE relayed that the court is neutral in regard to the neutrality of HB 366, but she said she is grateful to the sponsor for ensuring that whatever may be written could be implemented. She clarified that there is no time period in which a person would have to wait to be released from the disability. The time that had elapsed is one of the factors, in Section 3, that the court would consider, and Section 4 would require an individualized determination of whether the person is no longer a threat to public safety. She said it is not formulaic, but there are specific factors that the court would have to consider, and time is just one of them.

[9:09:37 AM](#)

SHERRE BAKER, Index Liaison Specialist, National Instant Criminal Background Check System (NICS), Federal Bureau of Investigation (FBI), offered clarification regarding the NICS. She said the only identifiers that the FBI requires for the NICS are: name, date of birth, and sex. She said the additional identifiers that are listed under the proposed legislation would be "an added plus," because sometimes people have the same name and can be misidentified if there are not enough identifiers. She said that for each data source, the agency entering the information is responsible for ensuring its accuracy and validity for audit purposes. She said sealing the records would work, but expunging would not, because there has to be documentation held somewhere in case of a future appeal and court order to acquire information. Information cannot go into the NICS index without supporting documentation.

MS. BAKER stated that someone who was involuntarily committed, who applies for relief and is judged to be of sound mind, would be removed from the NICS index; however, under the Safe Explosives Act, the person would "remain in the database for explosive purposes only." She said, "So, whenever it comes to a background check for a firearm, that's the only time that the database is accessed; no one else will have access to that information, and no one will see that information except for that

occasion." In response to Chair Lynn, she offered a quick explanation of the steps taken during transactions with FFL dealers.

9:13:54 AM

JAKE MCGUIGAN, Director, Government Relations/State Affairs, National Shooting Sports Foundation (NSSF), related that NSSF is the trade association for the firearms industry and represents over 10,000 retailers, manufacturers, and distributors nationwide, and over 50 companies in Alaska alone. He reported that in Alaska, the industry contributes 600 jobs, \$68 million of economic impact, and \$7 million in taxes to the State of Alaska. He thanked the sponsor and committee for the discussion on this issue. He said the tragedies that happened in New Town, Connecticut, Aurora, Colorado, and Tucson, Arizona, and at Virginia Tech shared a common denominator, which was "a mental health component." He said the State of Connecticut has a strict gun control law, but cut millions of dollars to mental health funding in the state. He explained that is why the firearms industry developed the "FixNICS" initiative. He said the industry represents firearms manufacturers, including Smith & Wesson, Ruger, Mossberg, Baretta, and ammunition manufacturers, including Winchester and Federal. He said "our" board of directors, which is run by the heads of those companies, decided to address the FixNICS initiative. He said his written testimony illustrates how "we" have progressed across the country, as well as a map that shows where legislation has been enacted and which states are not submitting "those records." He said one of the most recent successes was last week in South Dakota, where the House and the Senate passed the bill, 53-17 and 26-9, respectively, and it is currently awaiting the governor's signature. He stated, "As an industry, the last thing that we want to have happen is to have individuals that are federally prohibited from owning a firearm gaining access to that." He said that is the impetus for addressing the situation in states, including Alaska, North Dakota, South Dakota, and Oklahoma.

9:17:09 AM

MR. MCGUIGAN said the firearms industry has taken some heat for their stance on this issue; there are some groups that are not happy with the FixNIX initiative. In response to Chair Lynn, he said Gun Owners of America, as well as other in-state groups, are opposed to the initiative. He said NSSF has worked closely with the National Rifle Association (NRA) on HB 366 and the

bills proposed in other states, namely South Dakota. He emphasized one of the primary concerns of the NSSF and the NRA is for those who are currently prohibited by federal law to be in the NICS, but to have no further expansion of those categories. He said, "We don't want to discourage anyone from getting treatment." He stated that no matter what the legislature may hear in opposition to HB 366, the proposed legislation would not stop anyone from seeking treatment. He said, "The last thing that we want is a veteran that's returning from overseas, who may have [post-traumatic stress disorder] (PTSD), not getting the appropriate treatment because he's afraid of losing his firearms rights."

[9:19:02 AM](#)

MR. McGUIGAN indicated that another area of focus would be to ensure that an individual who was involuntarily committed and is later declared mentally healthy has no roadblock in the process of restoring his/her 2nd Amendment rights. He continued as follows:

So, those are the ... two major concerns that we have, along with the NRA, on legislation like this. And really, we as a firearms industry are always getting chastised or yelled at when we have these situations dealing with it has to be common ground. This is one area that does not impact any instruments, any firearms, any ammunition, where this may be an area where there is common ground, where ... those who are federally prohibited are in the system.

[9:19:58 AM](#)

MR. McGUIGAN, in response to a previous question, said Nebraska was a state with which NSSF was involved in getting legislation passed to require records sent to the NICS. He said Nebraska has had the law in place for three years, but had an administrative problem that needed correcting to ensure the records were being transferred to the NICS. He stated, "So, there are situations nationwide where it could be an administrative fix, it could be a legislative fix, Alaska being one of them where we need to fix it through legislation." Mr. McGuigan directed attention to a map [included in the committee packet], which shows states in green, which already have the process in place and have been submitting records to the NICS for years, and states in red, which have not been submitting any records. He stated, "Alaska is one of the worst offenders when

it comes to that." Mr. McGuigan said the first state that passed a similar bill was Louisiana, 92-2 in the House and 38-0 in the Senate, with an immediate signature by the governor, and he noted that Louisiana is not a state that takes its Second Amendment rights lightly. He offered to answer questions.

[9:21:33 AM](#)

REPRESENTATIVE ISAACSON, regarding veterans, asked how long treatment for PTSD lasts, and he questioned whether the involuntary commitment period listed should be 90 days rather than 30.

MR. MCGUIGAN said that issue has not been raised as a major problem in other states. He explained that a veteran is not involuntarily committed; he/she is taking the steps to get proper treatment. He relayed that in many of the states that have addressed similar legislation, the mental health community has supported it. He said there are states in the Northeast that say the Health Insurance Portability and Accountability Act (HIPAA) does not allow them to send records to the NICS, which he said is "not the case," because the President has put out an order saying that sending records is not a violation of HIPAA. One state where such a claim was made was Massachusetts; however, he pointed out that state's legislation had support from everyone in the mental health community both on the state and national level. He said, "Anyone who is going to voluntarily seek treatment would not be impacted by this legislation."

[9:24:31 AM](#)

CHAIR LYNN noted that HB 366 was scheduled to be heard in the House Judiciary Standing Committee.

[9:25:24 AM](#)

REPRESENTATIVE ISAACSON questioned how many times, in Alaska, a person who has gone in for involuntary treatment has become involuntarily committed and may, therefore, be affected under the proposed legislation.

[9:25:54 AM](#)

MELISSA RING, CEO, Alaska Psychiatric Institute, answered that during fiscal year 2013 (FY 13), approximately 1,500 people were admitted on an ex parte order, which is the 3-day evaluation

period. Of those, the institute filed for a 30-day involuntary commitment for 140 of those individuals, and of those 140, just 40 of them were actually committed during the calendar year 2013. She stated that it is rare that people come in voluntarily to begin with, and she said she knows of none who were switched from a voluntary admittance to a 30-day commitment.

[9:27:27 AM](#)

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) for HB 366, Version 28-LS1172\0, Strasbaugh, 3/5/14, as a work draft. [There being no objection, Version 0 was before the committee.]

[9:27:45 AM](#)

REPRESENTATIVE KELLER moved to report CSHB 366, Version 28-LS1172\0, Strasbaugh, 3/5/14, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 366(STA) was reported out of the House State Affairs Standing Committee.

[9:28:07 AM](#)

REPRESENTATIVE ISAACSON expressed his desire that the next committee of referral work on the ability to reestablish a person's right to bear arms. He mentioned those who cannot afford an attorney possibly being excluded from the process of relief, and said "that is the only sore spot on this bill."

[9:29:12 AM](#)

REPRESENTATIVE HUGHES opined that it is a good thing for the safety of families and children to know that those carrying guns are mentally fit; however, she reiterated her concern that there is not a process for expungement, because a person should have the assurance that his/her record won't be reopened long after his/her health has been fully restored. She opined that the main intent of the bill is good.

HB 235-CONFIDENTIALITY OF APOC COMPLAINTS

[9:30:42 AM](#)

CHAIR LYNN announced that the final order of business was HOUSE BILL NO. 235, "An Act requiring the Alaska Public Offices

Commission to maintain the confidentiality of certain proceedings, documents, and information."

9:31:00 AM

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) for HB 235, Version 28-LS1130\N, Bullard, 2/5/14, as a work draft. There being no objection, Version N was before the committee.

9:31:18 AM

The committee took an at-ease from 9:31 a.m. to 9:32 a.m.

9:31:56 AM

REPRESENTATIVE HIGGINS, Alaska State Legislature, as prime sponsor, presented HB 235. He said his mother taught him that a person's "name" is the most important thing, and he said the proposed legislation would protect a person's name, without taking away any authority from the Alaska Public Offices Commission (APOC). He explained that under HB 235, APOC would be required not to make public a complaint against someone until the commission has done its due diligence in determining whether the complaint was valid. He indicated that APOC was already supposed to do that.

9:33:34 AM

CHAIR LYNN posed a scenario in which a person files a complaint against a candidate, and he asked the bill sponsor to confirm that under HB 235, the complaint would have to be kept confidential if it was unfounded, but if it was found to be a legitimate complaint, then it would become public, even before the election date.

REPRESENTATIVE HIGGINS confirmed that is correct. He said the bill has basically "taken away special interest groups."

CHAIR LYNN asked Representative Higgins to confirm if he is talking about the complaints from political special interest groups.

REPRESENTATIVE HIGGINS said that is correct.

CHAIR LYNN offered his understanding that the Legislative Ethics Committee and APOC are two separate entities, and a person could

be found guilty under one but not the other; however, a complaint under the Legislative Ethics Committee can be kept confidential at the expressed wish of the defendant.

REPRESENTATIVE HIGGINS offered his understanding that is correct.

[9:35:21 AM](#)

REPRESENTATIVE KELLER opined that HB 235 is a good bill. He observed that throughout the bill is language specifying that the "trigger" is when APOC determines that a violation has been made. He said he would like to know what criteria APOC uses.

[9:36:07 AM](#)

THOMAS STUDLER, Staff, Representative Pete Higgins, Alaska State Legislature, answered questions on behalf of Representative Higgins, primer sponsor. He stated that the determination process is left to APOC; therefore he deferred to [the executive director of] APOC to answer the question.

CHAIR LYNN ventured that the complexity of a case may determine the length of an investigation.

REPRESENTATIVE HIGGINS responded that's correct.

[9:36:36 AM](#)

PAUL DAUPHINAIS, Executive Director, Alaska Public Offices Commission (APOC), Department of Administration (DOA), prefaced his response to Representative Keller's question by outlining APOC's complaint process. He listed the seven appropriate technical aspects for which APOC checks on a submitted complaint: full name of complainant; name of person against whom the complaint is being filed; the statute or regulation allegedly being violated; a clear and concise description of the fact, which if true would be a violation; the complainants knowledge of the facts; any relevant documentation; and proof that the complaint and the documents have been served on the person who is being accused of wrong-doing. He said if APOC staff accepts the complaint, letters are sent to the complainant and the respondent, and the respondent may reply within 15 days. An investigation is carried out and a staff report completed within 30 days of acceptance of a complaint. The staff report is published, and the respondent may respond to the report within 15 days. The commission has a hearing, and the order

from the commission is produced within 10 days of the hearing. Mr. Dauphinais stated that under APOC's current process, all the documents are public. He said when APOC staff takes on a complaint, it is not a decision maker in these processes, but makes a recommendation to the commission based on the investigation that has been held. He said under HB 235, nothing would be public until the commission makes a decision.

[9:39:10 AM](#)

CHAIR LYNN asked Mr. Dauphinais to confirm that currently a complaint made to APOC would be made public.

MR. DAUPHINAIS answered that it would be a public document. He added, "We do not do press releases or anything like that."

CHAIR LYNN recollected he had seen press releases in the past, but ventured they had been made after the decision.

MR. DAUPHINAIS offered his recollection that the only press release he has done was an advertisement for the public member of the commission.

[9:39:51 AM](#)

MR. STUDLER said APOC does not make press releases, which he opined is appropriate; however, he said the second APOC makes a document public, it is the media that spreads the word.

[9:40:26 AM](#)

MR. DAUPHINAIS, in response to Chair Lynn, confirmed that a complaint hearing goes on the commission's meeting agenda. When it receives a complaint and accepts it, because it is a public document, APOC is required to have it available. He said the media frequently checks APOC's web site to see what has been posted recently. In response to a follow-up question, he said the complaint number goes on the agenda, as well as the names of the parties - complainant and respondent. When the information is made public, it is the entire document that is made public.

[9:42:10 AM](#)

CHAIR LYNN asked Mr. Dauphinais if he held a position on the proposed legislation.

MR. DAUPHINAIS explained he was experiencing technical difficulties, wherein he could see the committee but could not hear the question.

[9:42:55 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked how the current complaint processes of APOC and the Select Committee on Legislative Ethics differ.

MR. STUDLER answer that currently a complaint to APOC is made public, before it has been heard; under HB 235, the complaint would remain confidential until proven valid.

REPRESENTATIVE HIGGINS explained that the proposed legislation would also set up a consequence to leaking information: If someone made the information public, without the commission having done its due diligence, then the complaint would be dismissed. He expressed hope that such a consequence would keep accusations from being spread before they had been proven.

CHAIR LYNN remarked that some complaints are valid, while others are part of "political game playing."

REPRESENTATIVE HIGGINS said the intent of the bill is to allow APOC do its job.

[9:44:58 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked, "So, if this bill passes, will the APOC complaint process and the Legislative Select Committee on Ethics complaint process [be] substantively different [in] any way?"

REPRESENTATIVE HIGGINS answered, "No, I don't believe so."

[9:45:16 AM](#)

REPRESENTATIVE HUGHES offered her understanding that when a case comes before APOC, that meeting is public, but the commission refers to the two parties as complainant and respondent rather than using names. She said she thinks the Legislative Select Committee on Ethics hold a closed meeting so that the parties' names can be used.

[9:45:57 AM](#)

MR. STUDLER offered his understanding that APOC's meetings are public, but deferred to Mr. Dauphinais to answer the question about names.

[9:46:15 AM](#)

MR. DAUPHINAIS reiterated that APOC's current process is to hold an open meeting, and it uses people's names during the hearing. He said those involved testify in person or telephonically. He offered his understanding that under HB 235, the meeting would be closed and APOC's documents would be held confidential. He said he does not know what the Legislative Select Committee on Ethics does.

[9:46:53 AM](#)

CHAIR LYNN remarked that APOC follows the rules set by the legislature, and the Legislative Select Committee on Ethics is "under regulation, which we are considering here." He reiterated his understanding that a person could be found guilty under one but not the other.

[9:47:14 AM](#)

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS), Version 28-LS1130\N, Bullard, 2/5/14, as a work draft. There being no objection, Version N was before the committee.

[9:47:39 AM](#)

CHAIR LYNN, after ascertaining that there was no one else who wished to testify, closed public testimony.

[9:47:50 AM](#)

REPRESENTATIVE ISAACSON thanked the sponsor for bringing forward HB 235. He proffered that it would take "gamesmanship out of the process that's intended," while offering protection to those until proven guilty. He offered his understanding of Mr. Dauphinais' testimony was that the proposed legislation would be "completely doable by the department."

[9:48:49 AM](#)

REPRESENTATIVE KELLER moved to report CSHB 235, Version 28-LS1130\N, Bullard, 2/5/14, out of committee with individual

recommendations and the accompanying zero fiscal note. There being no objection, CSHB 235(STA) was reported out of the House State Affairs Standing Committee.

[9:49:29 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:49 p.m.