ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 14, 2018
3:20 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 355
"An Act relating to the crime of criminally negligent burning; relating to protection of and fire management on forested land; relating to prohibited acts and penalties for prohibited acts on forested land; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 75
"An Act relating to gun violence protective orders; relating to the crime of violating a protective order; relating to a central registry for protective orders; relating to the powers of district judges and magistrates; requiring physicians, psychologists, psychological associates, social workers, marital and family therapists, and licensed professional counselors to report annually threats of gun violence; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 355
SHORT TITLE: FIRE;FOREST LAND; CRIMES;FIRE PREVENTION

SPONSOR(s): REPRESENTATIVE(s) GUTTENBERG

02/16/18	(H)	READ THE FIRST TIME - REFERRALS
02/16/18	(H)	RES, JUD
02/28/18	(H)	RES AT 1:00 PM BARNES 124
02/28/18	(H)	Heard & Held
02/28/18	(H)	MINUTE(RES)
02/28/18	(H)	RES AT 6:00 PM BARNES 124
02/28/18	(H)	Heard & Held
02/28/18	(H)	MINUTE(RES)
03/05/18	(H)	RES AT 1:00 PM BARNES 124
03/05/18	(H)	Heard & Held
03/05/18	(H)	MINUTE(RES)
03/09/18	(H)	RES AT 1:00 PM BARNES 124
03/09/18	(H)	Moved CSHB 355(RES) Out of Committee
03/09/18	(H)	MINUTE(RES)
03/12/18	(H)	RES RPT CS(RES) NT 4DP 3NR 1AM
03/12/18	(H)	DP: LINCOLN, DRUMMOND, JOSEPHSON, TARR
03/12/18	(H)	NR: BIRCH, PARISH, TALERICO
03/12/18	(H)	AM: RAUSCHER
03/14/18	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 75
SHORT TITLE: GUN VIOLENCE PROTECTIVE ORDERS
SPONSOR(s): REPRESENTATIVE(s) TARR

01/23/17	(H)	READ THE FIRST TIME - REFERRALS
01/23/17	(H)	JUD, FIN
02/28/18	(H)	JUD AT 1:00 PM GRUENBERG 120
02/28/18	(H)	Heard & Held
02/28/18	(H)	MINUTE(JUD)
03/12/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/12/18	(H)	Heard & Held
03/12/18	(H)	MINUTE(JUD)
03/12/18	(H)	JUD AT 7:00 PM GRUENBERG 120
03/12/18	(H)	Heard & Held
03/12/18	(H)	MINUTE(JUD)
03/14/18	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE DAVID GUTTENBERG
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 355, presented the legislation as prime sponsor of the legislation.

JOHN "CHRIS" MAISCH, Director & State Forester
Division of Forestry
Department of Natural Resources (DNR)
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 55, answered questions.

ANNE NELSON, Senior Assistant Attorney General
Natural Resources Section
Civil Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 355, answered questions.

BRENDA AHLBERG
Kenai Peninsula Borough
Kenai, Alaska
POSITION STATEMENT: During the hearing of HB 33, testified in support of the legislation.

JAMES SQURYES
Rural Deltana, Alaska
POSITION STATEMENT: During the hearing of HB 355, testified.

DARIO BORGHESAN, Assistant Attorney General
Opinions, Appeals, & Ethics Section
Civil Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 75, answered questions.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 75, answered questions.

STACIE KRALY, Chief Assistant Attorney General
Statewide Section Supervisor
Human Services Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 75, answered questions.

ACTION NARRATIVE

3:20:04 PM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 3:20 p.m. Representatives Claman, Stutes, Reinbold, and LeDoux were present at the call to order. Representatives Kopp and Eastman arrived as the meeting was in progress.

HB 355-FIRE;FOREST LAND; CRIMES;FIRE PREVENTION

3:20:29 PM

CHAIR CLAMAN announced that the first order of business would be CS FOR HOUSE BILL NO. 355(RES), "An Act relating to the crime of criminally negligent burning; relating to protection of and fire management on forested land; relating to prohibited acts and penalties for prohibited acts on forested land; requiring the Alaska Supreme Court to establish a bail schedule; and providing for an effective date."

[Before the committee was the working draft, CSHB 355(RES), labeled 30-LS1382\J.]

3:20:59 PM

REPRESENTATIVE DAVID GUTTENBERG, Alaska State Legislature, explained that HB 355 upgrades how the state deals with forest fires, and clarifies language. He remarked that the state cannot continue to have forest fires the size of the State of Delaware year, after year, after year. [Representative Guttenberg then paraphrased from the document titled "HB-355 Fire Prevention and Crimes on Forested Land.] He pointed out that the some of the fires included: the Sockeye Fire that caused $10 million in damages and was started by a human due to careless open burning; the Card Street Fire in Soldotna was human caused; the Funny River Fire was human caused and it was in close proximity to the Card Street Fire from the previous year; the Fairbanks Rex Bridge Fire near Clear was caused by lightening; and the 2017 McHugh fire was started by a campfire left behind by a hiker in Chugach State Park. The Division of Forestry is trying to reduce the incidents of fire and set up a schedule where people who simply do not have a burn barrel is

one thing, but someone who lets a fire get out of control is something else, and someone that intentionally sets a forest fire is another classification. Portions of this legislation deal with more fire prevention programs, "and going down the road and doing that stuff. Smokey the Bear kind of world." This legislation includes some changes in statute to reflect that the names have changed "so that the Division of Forestry is actually what is referred to now where fire suppression is actually what they're doing because those names change over time," he said."

3:23:58 PM

REPRESENTATIVE KOPP asked whether the intent of this legislation is to update Title 41 statutes related to burning because the statutes had not been reviewed in approximately 60 years.

REPRESENTATIVE GUTTENBERG responded that Representative Kopp was correct.

REPRESENTATIVE KOPP asked whether anyone could speak to the changes in the different sections of HB 355.

3:25:09 PM

JOHN "CHRIS" MAISCH, Director & State Forester, Division of Forestry, Department of Natural Resources (DNR), advised that the last time these statutes were addressed was in 1961, and a large portion of this bill updates the language for format and the outdated style of writing and outdated terminology. He paraphrased from the Sectional Analysis for Version J [included in the members' packets], which read as follows [original punctuation provided]:

> **Section 1**. Amends AS 11.46.427(a)(2) by adding references to AS 41.15.060 -41.15.120 to make it easier for agencies to coordinate enforcement of similar statutes that appear in different Titles of law.
>
> **Section 2**. Amends AS 41.15.010 to add the word forested land to the intent language of this statute. Forested land is already defined in AS 41.15.170 and brings consistency to terminology used in the statutes.

Section 3. Amends AS 41.15.040 by updating terminology by deleting the "division of land" and adding "division of forestry". Clarifies the right of entry to public or privately-owned land for the purpose of preventing, suppressing, and controlling a wildland fire to include for the purpose of "investigating" and "when responding to a wildland fire or suspected fire or administering the provisions of this chapter."

3:27:05 PM

MR. MAISCH explained that the words "at any time" were struck because it was believed that "any time" was too broad and by listing these out, it provided more specificity to that right of entry piece. The prior statute read "preventing, suppression, and control of wildland fire" and the term "investigating" was added because the 1961 prevention was a holistic term that included fire investigation for cause and determination.

Section 4. Adds a new subsection (b) to AS 41.15.040 that clarifies that a person may not interfere with or prohibit access authorized under (a) of this section, which is the right to enter for the purposes stated.

MR. MAISCH explained that the intent was to make clear to the lay reader especially, that "investigating" was one of the reasons the state had the right to enter the property. Clearly, he advised, during an emergency that is one thing, but after an emergency, if the division does not have permission from the landowner to enter, it must seek a search warrant because the landowner has standard protections under criminal or constitutional law. He related that his prevention officers do not carry badges or guns, they are peace officers, which is defined later in the section. This language is solely for the purposes of this chapter, and wildland and fire prevention is related to the narrow definition of peace officer, he explained.

Section 5. Amends AS 41.15.050 Fire Season to allow the commissioner the ability to designate other periods as fire season at any time in order to allow open burning only by permit or to prohibit open burning.

Section 6. Amends AS 41.15.060. Permits. To include obtaining a permit for setting of fires, use of burning devices, and other activities and use of land

that increases fire danger. This would include burning devices such as bum barrels, a common source of urban interface ignitions. This section is also amended to remove the type of offense a violation of this section would be and relies on a new section to establish types of violations.

3:28:55 PM

MR. MAISCH explained that the language is more specific as to why the person is obtaining that permit. The current permit system is only in place during fire season, which is the period of time that is statutorily designated. The process, he explained, is that a person can go online to self-issue a permit which includes educational information about safe burning practices and the things they must have on hand if they are going to burn. Each day, the Division of Forestry opens and closes burning based on conditions, he related, which could be fire weather, availability of resources to respond to an incident if it is already tied up with other wildland fire activities, and it outlines the things a person must do to safely use best practices to burn. Most importantly, the person is to call in every day to determine whether it is a safe day to burn, he advised.

Section 7. Adds a new subsection to AS 41.15.060 stating that a person may not participate in any activities that increase fire danger without a permit as prescribed by the commissioner in regulation.

Section 8. Amends AS 41.15.70. Disposal of burning materials to read "may not discard ... burning materials on forested land." Repeals language on the type of violation this offense would be and relies on amendments in Section 13 of this bill that provides a new range of violations. It also removes a reference to the "fire season" as the period of time this section applies and removes a reference to "public or private land".

Section 9. Amends AS 41.15.090. Building or leaving fires. To read " ... may not start a fire ... without first clearing the ground." The type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Sections 10. Amends AS 41.15.090 by adding a new subsection (b) A person who starts a fire in or near forested land may not leave the fire before totally extinguishing the fire. This change makes it very clear that leaving a fire unattended will result in consequences.

Section 11. Clarifies AS 41.15.100 Setting fires without consent. Updates language to "may not set on fire forested land ... " to make this section consistent with terminology and intent. The type of offense for a violation of this section is repealed and relies on a new section to establish types of violations.

Section 12. Amends AS 41.15.110 Uncontrolled spread of fire; leaving a fire unattended by repealing the type of offense for a violation of this section and relies on a new section to establish types of violations. Subsection (b) has verbiage change to shall, a positive action as opposed to the deleted current language "who neglects to." New language is added to make it clear that a person may not leave a fire unattended and the type of offense for a violation of this section is removed and relies on a new section to establish types of violations. Subsection (c) updates terminology and makes it clear in any criminal action brought under this section that the escape of a fire may be evidence that the person acted knowingly. This change helps define mental state.

Section 13. Amends AS 41.15.120 by including the term investigate as one of the criteria for when an officer or employee of the United States or the state who is authorized to prevent and suppress fire requests a person to assist with such efforts. It also adds the word shall as opposed to "fails to" in determining if a person is in violation of the statute. The type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Section 14. Amends AS 41.15.130 Backfires. Adds the terminology and burnouts to allow fire suppression activity as "directed by an officer or employee of the U.S. or state who is authorized ... " and makes it

clear that AS 41 .15.045 (Civil immunity) applies to the activities under this section.

3:31:27 PM

MR. MAISCH explained that Section 14 updates some terminology, and "backfires" is the term used when the division lights fires to fight fire, but the more common term is "burnout," which is similar to a backfire, except backfire is a more outdated term. When speaking with firefighters these days, they would rarely use that language, firefighters refer to using fire to fight fire as a burnout operation. The specific statutes are cited and it makes some clarification as to when fire is used, as opposed to the general term backfire.

Section 15. Repeals and reenacts AS 41.15.140 to establish a range of violations and fines that increase with the seriousness of the offense. This section also links to the criminal statutes to improve the understanding and consistency between enforcement agencies and the courts.

Subsection (a) makes it clear that if AS 41. 15.150 applies, a felony charge, the following sections do not apply.

Subsection (a)(l) establishes a class A misdemeanor offense for violations of AS 41.15.010- 41.15 .130 for persons who knowingly violate this section.

Subsection (a)(2) establishes a fine amount in accordance with AS 12.55

Section 16. Amends AS 41.15.150 to provide specific criteria for criminal burning in the first degree if (a)(l) the person violates AS 41.15.155, and (2) a provision of 41.15.010-41.15.130 or a regulation adopted under AS 41.15.010-41.15.130

Subsection (b) provides for a class B felony if in violation of subsection (a) of this section and is punishable as provided in AS 12.55 the Sentencing and Probation Chapter of Title 12.

Section 17. Amends AS 41.15.150 by adding a new section to provide specific criteria for criminal burning in the second degree if the person (a)(l)

knowingly sets a fire, (2) with criminal negligence, the person (a) permits the fire to spread beyond the person's control or (b)fails to prevent the fire from spreading to forested land or other flammable material and (3) as a result, the fire burns forested land or other flammable material located or growing on land that is not owned, possessed or controlled by the person.

Subsection (b) provides for a class C felony if in violation of subsection (a) of this section and is punishable as provided in AS 12.55 the Sentencing and Probation Chapter of Title 12.

Subsection (d) provides for an upgrading violation to a class B felony if the initial setting of the fire is in violation of AS 41.15.010 - 41.15. 130 or a regulation adopted under AS 41.15.010 - 41.15.130.

Section 18. Amends AS 41.150.160. Double damages in civil actions to clarify applicable statutes for this provision.

Section 19. Amends AS 41.15.170 to add paragraph (5) "knowingly" which has the meaning in AS 11.81.900 and adds paragraph (6) "recklessly" which has the meaning given in AS 11.81 .900.

Section 20. Amends AS 41.15.950 to add (b)(4) a new subsection to provide clear authority to issue a citation to a person who violates a provision of AS 41.15.010 - 41.15.170 or a regulation adopted under this chapter.

Section 21. Adds a new section AS 41.15.960 directing the supreme court to establish a bail schedule for violations of statute specified in this bill.

Section 22. Repeals AS 41.15.080 which was a section on equipment and notice requirement for operators of a conveyance on or above forested land to be equipped with a receptacle for the disposal of burning material, shall post or display a copy of AS 41.15.050 - .080 and 41.15.140 in a conspicuous place. Additionally, an operator of a milling, logging or commercial operation shall also post and display a copy of the statute per the previous notation and if

found in violation of this section, is guilty of a misdemeanor.

Section 23. Amends the uncodified law of the State of Alaska by adding a new section to read: TRANSITION: REGULATIONS. The Department of Natural Resources may adopt regulation necessary to implement the changes made by this Act. The regulation take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

Section 24. Provides courts 120 days to establish bail schedule required by Section 21.

Section 25. Sections 23 and 24 take effect immediately under AS 01.10.070 (c)

Section 26. Except as provided in Section 25, this Act takes effect July 1, 2018.

3:32:52 PM

MR. MAISCH offered that the whole purpose behind HB 355 is about fire education and preventing human-caused wildfires. He pointed to the document on the committee table titled, "HB 355 Fire Prevention and Crimes on Forested Land" and advised that approximately 80 percent of the fires in Alaska are the result of humans, especially around communities. He pointed to the examples of five different wildfires in the last few years that have cost the general fund, $20 million in one case, $10 million in another case, and significant loss of structures for primary residents. He related that even if one of those fires could be prevented, it saves the state significant general fund monies, and significant damage to private individuals.

3:33:33 PM

REPRESENTATIVE KOPP referred to Sec. 2, [AS 41.15.010], page 2, lines 4-7, which read as follows:

> It is the intent of AS 41.15.010 - 41.15.170 to provide protection from wildland fire and other destructive agents, commensurate with the values at risk, on **forested** land that is owned privately, by the state, or by a municipality.

REPRESENTATIVE KOPP offered a scenario of a fire, such as the Sockeye Fire, that would sweep through a forested land and then move through a residential area that is solely made up of homes. He asked whether the statutes that come into play to address the negligent burning go over to Title 11 in those areas and the Title 41 offenses, or if it is all the same event as to enforcement. The state has these mirror sets of laws between Titles 11 and 41, and he said that he would like to have an idea of the interplay between the two statutes.

MR. MAISCH responded that in Title 41, the definition of forested land is broad as it includes, brush, grass, and basically any flammable organic material. Therefore, it doesn't matter where the fire occurs on the landscape, it is what the division calls the "urban interface" which would be communities and subdivisions, small villages, or in the true wildlands which would be more like forest land. The Title 41 statute would apply whether it is in an urban or rural setting as far as the enforcement of the burning statutes. He explained that a portion of this bill does cross-reference the criminal part over to the criminal code. Currently, the only ability the division has is to issue a violation for the violation of these statutes, which is a mandatory court appearance as well as coordination with the District Attorney's Office. It is rare that the division takes that that action because it has to be a serious case as the courts are already tied up with more important matters. This legislation would offer the division more of a range of options in dealing with infractions of the burn regulations, he explained.

3:35:51 PM

REPRESENTATIVE KOPP surmised that there are solely civil violations here, and there are offenses here that are not misdemeanors.

MR. MAISCH answered that the division is proposing a bail schedule similar to a traffic ticket, to be approved by the Alaska Supreme Court. He said, "Not a maximum of $500, but they would establish the amounts based on the type of offense in the regulations, a class A misdemeanor offense, and then two felony offenses that are both at a class B and C level. He noted that this is a scaled approach to enforcement and as the type of offenses committed become more serious, potentially there is a greater punishment, and that is the criminal phase. Currently, he advised, the division has the ability to recover costs on the

civil side, and that is oftentimes how the division recovers costs.

3:36:55 PM

REPRESENTATIVE REINBOLD asked whether Mr. Maisch was familiar with "Firewise?"

MR. MAISCH responded that Firewise is a program the division is actively promoting, it offers education, and it works directly with the homeowners and communities.

REPRESENTATIVE REINBOLD advised that she has participated in Firewise and it provides excellent programs. Firewise has helped out with private property and it also helps with trail building efforts to decrease the amount of debris and materials that would stimulate fires. She asked whether Mr. Maisch works with the "Hot Shots?"

MR. MAISCH answered that the division is the "Hot Shots," and he would be happy to talk about the crews because they are important resources to the division and are equivalent to a "smoke jumper" in terms of the level of training and professionalism.

REPRESENTATIVE REINBOLD advised that she has tried for approximately five years to get them into her area but it is competitive" because they are in high demand. She commented that they are extremely well trained and professional, but she ended up using prisoners to help clear the debris to reduce the fire hazards in her area and "they were awesome with the chainsaw."

3:38:56 PM

REPRESENTATIVE REINBOLD referred to Sec. 5. [AS 41.15.050], page 2, lines 21-30, and asked whether there are any changes in permitting.

MR. MAISCH replied that there are no changes to permitting, and that Section 5 clarifies that the commissioner has the authority, at any time, to extend the fire season based on need.

3:39:27 PM

REPRESENTATIVE REINBOLD referred to Sec. 10. [AS 41.15.100], page 3, lines 22-23, which read as follows:

(b) A person who starts a fire in or near forested land may not leave the fire before totally extinguishing the fire.

REPRESENTATIVE REINBOLD asked whether there is a definition of "totally extinguishing the fire."

MR. MAISCH responded that the division points out that a person must be able to touch it with their hand. He explained that "cold and out" is the common way in which firefighters will look when performing mop up on a fire to make sure a hot ember is not covered in ash. Smokey Bear, the most iconic figure internationally, offers the good message of, "stir the fire." The fire must be dead-out and the best way to determine whether a fire is dead-out is by touch. He offered that the division's education programs focus on that, it offers school programs, it is at the fairs around the state, and it is at all community events where it has an opportunity to see and meet a lot of people. The division's prevention officer teaches safe burning practices, including how to properly extinguish a campfire to be certain it is dead-out, he remarked.

3:40:52 PM

REPRESENTATIVE REINBOLD asked whether the division runs the Smokey Bear program.

MR. MAISCH answered that the United States Forest Service has the copyright for Smokey the Bear, but yes, the division has its own Smokey the Bear costumes in every area office, and they are active with Smokey the Bear type of issues.

3:41:12 PM

REPRESENTATIVE REINBOLD referred to Sec. 18. [AS 41.15.160], page 5, lines 26-31 and page 6, lines 1-3, and paraphrased that "you can double the damages in civil actions." She asked Mr. Maisch to elaborate.

MR. MAISCH replied that double damages is the standard starting point of civil recovery, and there are many reasons for a fire, such as accidental and negligent, negligent, or a lot of different standards that the division is reviewing. He pointed out that double damages is the standard starting point for cost recovery and it typically gets the attention of the party the entity is trying to recover costs from, typically they settle

for insurance limits, depending upon the situation. The division is not out to bankrupt an individual or a business, but it depends on how egregious the offense, he offered.

3:42:24 PM

ANNE NELSON, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, explained that the double damages provision is available to any person, as well as governmental entities, that have incurred suppression costs. She described that it is a mechanism that functions not only as a deterrent, but also as a method for the state, in this case the Division of Forestry, to recoup the costs of fighting a fire. This provision is also available to property owners who may have lost property during a fire, she offered.

3:42:48 PM

REPRESENTATIVE REINBOLD asked whether the double damages only include the suppression costs, or does it include property damage to the private landowner.

MR. MAISCH answered that for the division, it is simply trying to recover its costs of preventing the fire. Although, he offered, sometimes when there are not sufficient insurance proceeds, the division will subordinate itself and first let the damaged homeowner be made whole for the damages they suffered before the state will then step in and recover costs. Typically, the division does not go for the value of the timber or the land, it is just the suppression costs, he said.

3:43:47 PM

REPRESENTATIVE REINBOLD referred to Secs. 21 and 24 and noted that they go hand-in-hand with regard to the bail schedule and asked whether the division has 120 days to develop a bail schedule.

MS. NELSON responded that the Alaska Supreme Court must adopt a bail schedule. Under this bill, the Division of Forestry would adopt regulations implementing these statutes and create the bailable offenses, which are essentially non-criminal tickets that can be satisfied without a court appearance by simply paying the fine. Once the regulations have been through the public comment period and are properly adopted under the Administrative Procedures Act (APA), those regulations would be

sent to the Alaska Supreme Court with a suggested bail schedule, she explained. The Alaska Supreme Court would then review the regulations and, she opined, it would publish them under Administrative Rule 43.

3:45:08 PM

CHAIR CLAMAN opened public testimony on HB 355.

3:45:51 PM

BRENDA AHLBERG, Kenai Peninsula Borough, advised that on behalf of Mayor Charlie Pierce and the Kenai Peninsula Borough, they support the enactment of HB 355. As the Kenai Peninsula's population continues to grow, so too does the expectation that wildfires must be reduced using combined strategies. Too often, she pointed out that people quickly lose the sense of awareness or fail to practice prevention after the response to wildfires and costly rehabilitation measures have been completed for the season. This bill creates an updated framework that addresses fire prevention and enforcement actions aimed at reducing risk, educating the public through outreach, and recognizing the movement toward establishing fire adapted communities. She commented, "Let's face it, we live in the trees, the wildland-urban interface (WUI) and fuels reduction projects on private or public landholding should compliment fire as a natural occurrence on the landscape." Approximately 98 percent of all fire starts on the Kenai Peninsula are human caused and that is not acceptable. As the WUI continues to intermingle with forested land, and as people continue to live in the trees, there is a need to recognize that minimizing wildfire risk is a shared responsibility among all landowners, she remarked.

3:47:39 PM

JAMES SQURYES noted his appreciation for the amendment process that took place during the last committee of referral, but there is still work to be accomplished on HB 355. He noted that he has been concerned for some time with AS 42.15. He offered hope that legislators use this opportunity to make additional amendments to this bill to bring the statutes in line with the constitutional elements that legislators swore to uphold under Article 12, Sec. 5, of the Constitution of the State of Alaska. In particular, Sec. 3 of the bill refers to AS 41.15.040, the right of entry to control and suppress fires, needs to be realigned with Article 1, Section 14 of the Constitution of the State of Alaska, and the Fourth Amendment of the Constitution of

the United States against unreasonable searches when it comes to private property. (Indisc.) wants the Division of Forestry to charge in and control and suppress wildfire even if it is on private property, that is not the question here. He commented that Alaska is a huge state and there is not that much private property, even less when backing out urban from rural privately owned forested land. He noted that what is in question is the current prevention terminology in statute that can be easily abused by virtually any employee in the Division of Forestry to enter private property when there is no probable cause that a crime is being committed. Currently, a Division of Forestry employee is considered a peace officer under AS 41.15.950 and may climb over a rock and posted gate and walk down a person's driveway, where the homeowner clearly expressed their expectation of privacy, without probable cause that a crime is being committed to prevent, not just a wildfire, but any fire. Many Alaskans, like himself, currently have smoke rolling out the top of their chimneys as he presents his testimony. None of the people have a problem [rising to] probable cause, yet they know that Article 1, Section 22 indicates that the right of the people to privacy is recognized and shall not be infringed, he said. AS 41.15.040 could be cleaned up by a simple amendment on page 2, line 14, adding the word "wildland" between the words "suspected fire;" and on page 2, line 16, removing the word "preventing." The title of this section could be modernized by changing it to "AS 41.15.040, Authority of entry to control and suppress ...

CHAIR CLAMAN advised Mr. Squryes that he had gone over his two minutes and asked that he conclude his remarks.

MR. SQURYES said he wanted to address the situation of peace officers under AS 41.15.950 being applied to the employees of the Division of Forestry who are not trained as peace officers.

3:50:19 PM

REPRESENTATIVE EASTMAN asked about his concerns with regard to peace officers in this bill.

MR. SQURYES explained that AS 11.61.220 involves misconduct involving weapons in the fifth degree, whereby an Alaskan carrying a concealed firearm, even on his own private property, has a duty to immediately notify a peace officer that they are carrying a concealed firearm, and the peace officer has the right to secure the deadly weapon. He described that this procedure, wherein someone on the fire crew is not trained in

performing, opens the pandora's box to the possibility of undesirable outcomes. In revising the statute, it is time for this issue to be addressed, he said.

3:51:32 PM

CHAIR CLAMAN, after ascertaining that no one wished to testify, closed public testimony on HB 355.

[HB 355 was held over.]

HB 75-GUN VIOLENCE PROTECTIVE ORDERS

3:52:04 PM

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 75, "An Act relating to gun violence protective orders; relating to the crime of violating a protective order; relating to a central registry for protective orders; relating to the powers of district judges and magistrates; requiring physicians, psychologists, psychological associates, social workers, marital and family therapists, and licensed professional counselors to report annually threats of gun violence; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

CHAIR CLAMAN advised that his first set of questions relates to constitutional questions and he invited Dario Borghesan, Department of Law to answer questions related to the bill.

3:53:04 PM

CHAIR CLAMAN asked Mr. Borghesan to provide his perspective on HB 75 as currently drafted, and whether it violates the Second Amendment of the Constitution of the United States, and if so, to describe those constitutional issues.

3:53:37 PM

DARIO BORGHESAN, Assistant Attorney General, Opinions, Appeals, & Ethics Section, Civil Division (Anchorage), Department of Law, answered that under Heller v. District of Columbia 554 U.S. 570 (2008), the United States Supreme Court ruled that the Second Amendment protects an individual's right to possess a firearm. The Supreme Court has not weighed in on the (indisc.) standard for judging whether a firearm law is consistent with the Second Amendment. He pointed out that without that guidance, the

federal circuit courts have mostly upheld the various types of firearm restrictions, such as laws prohibiting convicted felons and people with domestic violence convictions from possessing firearms. He opined that there is no decision reviewing a law exactly like HB 75, and of course, until the United States Supreme Court weighs in again on Second Amendment standards, it is unknown whether HB 75 is constitutional under the Second Amendment.

CHAIR CLAMAN offered that similar laws have been passed, but they are not identical to what is proposed in this legislation. He pointed to the States of Indiana, Washington State, Oregon, California, and Florida, which have passed a gun violence protective order bill, and asked whether any of those gun violence protective order components had been challenged on a constitutional basis.

MR. BORGHESAN answered that the State of Indiana's gun violence protective order law, which was the oldest, was challenged under the Constitution of the State of Indiana equivalent to the Second Amendment, and it was upheld. He opined that none of the more recent laws passed in the states mentioned by Chair Claman, have been challenged or at least have resulted in a judicial decision.

3:55:37 PM

CHAIR CLAMAN surmised that the State of Indiana case has been published and it could be reviewed while the committee continues to review this bill.

MR. BORGHESAN responded that Chair Claman was correct.

CHAIR CLAMAN asked whether any portion of the State of Indiana law was held on constitutional issues or was the entire statute approved.

MR. BORGHESAN opined that the entire statute was upheld.

CHAIR CLAMAN asked Nancy Meade, Alaska Court System (ACS) to explain the current statutory process and procedures regarding domestic violence protective orders and how this proposal for gun violence protective orders compares or contrasts with the current process.

3:57:03 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, answered that the gun violence protective order as envisioned by HB 75 is clearly modeled and drafted similarly to the existing statutes on both domestic violence protective orders, and the state's other categories of stalking and sexual assault protective orders. She commented that those are "lumped together" in the statutes as there are two procedures for obtaining a protective order. She explained that there are three available types of protective orders for domestic violence, similar to HB 75. The first protective order is an emergency order, and in HB 75 it is found on page 4, beginning at line 26, [AS 18.65.820(b)], which is modeled closely on the domestic violence language with some important distinctions that she would point out. The emergency protective orders are only good for 72-hours and they can only be filed by a peace officer. In the domestic violence world, this type of protective order is extremely rare as in some years, there are five, or three, or one. The second protective order is a short-term 20-day protective order, which is in the domestic violence stalking sexual assault found in HB 75, page 4, lines 7-25 [AS 18.65.820(a), HB 75, she explained. A short-term order is ex parte, meaning that a petitioner files the order and the respondent is not present at the hearing and does not participate in the hearing at all. For domestic violence, if the court finds probable cause that a crime of domestic violence had occurred and it was necessary to protect the petitioner from more domestic violence, the court must find by a preponderance of the evidence that the crime happened, and the court can then issue that domestic violence protective order.

3:59:35 PM

MS. MEADE explained that the difference here for the gun violence protective order is basically the burden of proof and the finding. She referred to page 4, lines 11-14 [AS 18.65.820(a)], and advised that this language matters mostly to the court when issuing an ex parte order. The court must find by a preponderance of the evidence, the following: the respondent poses a significant danger of injury to self or others by possessing a firearm; that less restrictive alternatives had been tried and were not effective; and the petitioner certified in writing that the efforts, if any, had been made to provide notice to the respondent. The key words being, "if any," because in the domestic violence world there is typically not great efforts to notify the respondent, which leaves basically two findings that must be found by the court by a preponderance of the evidence for these protective orders. To

contrast that with domestic violence, the findings for the short-term order is probable cause and it is a higher burden for the gun violence protective orders, she said. The third protective order is the long-term order described on page 3 of HB 75. In the domestic violence world, she explained, the long-term protective order is for one-year, and the gun violence protective orders would be in effect for six-months, she explained. Thereafter, someone could file another petition shortly before the protective order expired and seek to extend the order, which sometimes happens in domestic violence protective orders. Under HB 75, the finding that matters to the court is on page 3, lines 22-24 [AS 18.65.815(b)], wherein she advised, the court must find clear and convincing evidence that the respondent is a danger to self or others by possessing a firearm in order to issue the protective order. She pointed out that the gun violence protective order standard is a bit higher than the standard for long-term domestic violence protective orders where there must be a preponderance of the evidence, which is thought to be more than 50 percent assurance that the crime of domestic violence had occurred.

4:02:05 PM

MS. MEADE explained that with domestic violence protective orders and also sexual assault and stalking protective orders, the petitioners almost invariably apply for both simultaneously. The court immediately holds the short-term hearing, without the respondent present, and may issue that 20-day order. The respondent must have 10-days' notice of the hearing, and at least 10-days later the court holds a long-term hearing. The court may or may not issue that long-term protective order, she related.

4:03:02 PM

REPRESENTATIVE LEDOUX commented that this legislation takes property rights away from people, which must have some constitutional implications. She asked whether this would require counsel, and if so, there is probably a fiscal note from "somebody who is going to show up with a fiscal note."

MS. MEADE responded that she did not know the answer to Representative LeDoux's question.

MR. BORGHESAN answered that he would not be able to offer a definitive answer, and he opined that it appears the representation by counsel is not always required before a

deprivation of property. Except, he offered, due to the intersection between the deprivation of property and the Second Amendment rights, the Department of Law (DOL) "couldn't know that for certain."

4:04:55 PM

REPRESENTATIVE LEDOUX stated that she would like an answer to her question, or at least the best possible answer.

CHAIR CLAMAN asked whether Mr. Borghesan could offer more detail on the question. He then noted that some years ago there was an Alaska Supreme Court case that dealt with the question of the right to counsel. One of the issues was whether a certain level of fine alone was enough to trigger the right to counsel or whether jail time had to be part of the potential punishment. He opined that in that older case, and at that point in time, it was determined that a certain level of fine was enough to trigger a right to counsel. He noted that his memory may be unclear.

4:05:56 PM

MS. MEADE added that no matter the opinion of whether counsel was required in these cases, she said she could envision certain circumstances in which a judge might say that that is a right. It could be that the legislature wants to deal with this issue here and determine whether it wants counsel to be appointed. The problem being, that if no entity, such as the Office of Public Advocacy, is charged in its statute to provide counsel when a judge determines that counsel is due, there is the question of who pays and who provides counsel. She suggested that possibly the committee would want to clarify that issue.

4:06:42 PM

MR. BORGHESAN replied that the Department of Law (DOL) would be happy to provide a more detailed analysis of Representative LeDoux's question as to whether counsel would be required in a gun violence protective order hearing, and he will provide that written analysis at a later date. He added that he does know whether there are some decisions of the Alaska Supreme Court that specify the level of sanctions it takes to trigger the right to counsel, and he will provide a written response, he said.

4:07:25 PM

REPRESENTATIVE EASTMAN noted his interest in the cases where there may not be a right to counsel, and he assumed in that case, the discussion was about an individual who is pro se if they don't have their own counsel. He asked Ms. Meade to contrast the burden of proof to demonstrate someone's level of competence to represent themselves in court in this type of hearing versus their level of competence to own their own firearms. Which one is more difficult to prove, he asked, because it appears that if this action is successful and the person is deemed not to be competent enough to own firearms, are they competent enough to defend themselves legally.

MS. MEADE pointed out that protective order proceedings are civil in nature and they are not criminal cases, thereby, the criminal triggers for having court appointed counsel are not at play here. For example, in domestic violence protective order hearings, the respondent is not entitled to a court appointed lawyer. In the vast majority of cases, in the long-term hearing, no counsel is present for either party even though they are allowed to hire counsel but almost never hire counsel. She added that for the gun violence protective order, the judge is not making a competency determination, competency is a different set of issues the judge would review. Whereas, for the long-term order here, the judge would want clear and convincing evidence that the person is a danger to self or others by possessing firearms. She said that she recognizes there may be some interplay about mental stability or a mental state but, she opined, there would be different facts at play there. For example, in a competency proceeding, doctors and medical professionals are involved and that would not necessarily be true in these gun violence protective order proceedings.

4:10:06 PM

REPRESENTATIVE EASTMAN said "in these types of hearings" would Ms. Meade say that competency hearings are most likely ...

CHAIR CLAMAN interjected that when Representative Eastman says, "these types of hearings," Ms. Meade had offered three different types of hearings and asked him to clarify the type of hearing within which he was referring. A competency hearing is a very different hearing than a domestic violence hearing or a gun violence protective order hearing, he remarked.

REPRESENTATIVE EASTMAN clarified that the type of hearing is where someone would potentially lose the right to possess their

firearms. He asked whether there is an expectation on Ms. Meade's part that a significant number of competency hearings would be involved in furthering this process or would competency hearings probably not be a significant occurrence.

MS. MEADE reiterated that she would not anticipate competency hearings because those hearings are for criminal cases to determine whether a defendant is competent to defend themselves without an attorney in a criminal action. She further reiterated that under HB 75, where it is a civil action, there would not be a determination as to whether the person was capable of expressing themselves appropriately in order to defend themselves and opined that these do not tie into competency hearings.

4:11:41 PM

REPRESENTATIVE EASTMAN noted that in the event this protective order is granted and someone is to turn in their firearms, but they do not turn in their guns. At that point, he asked, whether it might move into a criminal matter where a competency hearing might be appropriate.

MS. MEADE replied that in the event the person does not obey that court order, it could be that law enforcement initiates a criminal complaint for violating the provisions of the protective order, and this bill adds that violating one of these protective orders is a crime as well. Therefore, law enforcement could initiate a criminal action against the person for failure to follow a protective order and that would be a whole separate criminal action. Perhaps, in that case, there could be competency issues or perhaps not because there are only competency issues when the person wants to represent themselves or there is a dispute regarding their competency.

4:12:58 PM

REPRESENTATIVE STUTES surmised that a person's gun ownership could be at risk if they have a domestic violence order filed against them.

MS. MEADE responded that Representative Stutes was not exactly correct because she was only trying to compare the existing laws on domestic violence to this brand-new gun violence protective order. Another testifier had advised that if a person is convicted of a crime of domestic violence, their gun ownership rights come into play. She reiterated that these are not crimes

whatsoever, these are simply civil protective orders and a district attorney is not involved. This is a citizen versus citizen to get protective orders and they are not criminal. This discussion is not about being convicted of a crime of domestic violence and possible gun ownership issues that might come into play. As to domestic violence protective orders, she explained that under statute, if a woman, for example, says that her brother committed a crime of domestic violence and therefore she wants to be protected. In the civil arena, if a gun was used or is alleged to have been used, or if the judge finds that a gun was used during that crime of domestic violence, it could be that the domestic violence protective order might read that the person cannot have firearms. She pointed out that that is not terribly common and it can only happen at the long-term hearing phase and not the earlier phase. Ms. Meade related that that information might be merely confusing and not as relevant to these protective orders, which would be solely about firearms.

4:15:05 PM

CHAIR CLAMAN, in response to Representative Reinbold, explained that people from the Department of Law (DOL) are available to discuss other matters, and Ms. Meade is available solely to compare and contrast the domestic violence protective order with the gun violence protective order.

REPRESENTATIVE REINBOLD said she has questions regarding amending the Alaska Rules of Civil Procedure, Rules 4 and 65, and the Alaska Rules of Administration, Rule 9, located in the title of the bill.

MS. MEADE advised that those are indirect court rule amendments and opined that they are not terribly consequential. She pointed out that the bill indirectly amends Rule 9 because under HB 75, no filing fee shall be charged to a petitioner who files for a gun violence protective order. The Alaska Rule of Civil Procedure 4 has to do with the service of process on individuals. This bill reads that law enforcement shall serve any order upon the respondent and therefore that is an indirect amendment of that court rule and not terribly troubling, she said.

REPRESENTATIVE REINBOLD asked about Alaska Rules of Procedure 65.

MS. MEADE advised that she had forgotten exactly how that rule read, but it is an indirect rule amendment that usually is not terribly troubling.

4:17:27 PM

REPRESENTATIVE REINBOLD referred to Sec. 3 [AS 18.65.530(a), page 2, lines 16-17, which read as follows:

> (a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person ...

REPRESENTATIVE REINBOLD requested an example of why there is probable cause.

MS. MEADE responded that this is a better question for DOL, but an officer can arrest someone or ask for an arrest warrant if they have probable cause to believe a crime had been committed, or if they see a crime. There are exceptions, wherein if the peace officer has probable cause to believe that domestic violence has occurred, or the person violated a domestic violence protective order, or a condition of release in certain cases, they are allowed to arrest without a warrant. That, she explained, is long existing language in the law wherein the legislature's intent was that those cases ought to have more immediate responses by law enforcement. She deferred to the DOL on that question.

4:19:08 PM

REPRESENTATIVE REINBOLD referred to Sec. 6. AS 18.65.815(a), [page 3, lines 12-14], which read as follows:

> (a) An immediate family member or a peace officer who reasonably believes that the respondent is a danger to self or others ...

REPRESENTATIVE REINBOLD asked the definition of "reasonably believes."

MS. MEADE answered that Sec. 6 is the meat of the bill and the long-term protective order. She then referred to [Sec. 6. AS 18.65.820, page 4, beginning line 7] and said that the short-term protective orders "so this is -- this is it." The person who "reasonably believes" is not anything the court would enforce or ensure because anyone can file anything and the court

can reject the filing. She referred to Sec. 6, page 3, line 13, and opined that the legislature does not intend for people to file for these protective orders frivolously or without basis. This language shows the legislature's intent that only immediate family members should request gun violence protective orders if they reasonably believe this person is a danger, she explained.

4:20:54 PM

REPRESENTATIVE REINBOLD noted that the definition of family does not include a girlfriend or boyfriend.

MS. MEADE replied that the bill defines "immediate family member" which does not include a boyfriend or girlfriend.

4:21:13 PM

REPRESENTATIVE REINBOLD offered concern that there is a loophole for abuse and asked how to ensure that "reasonably believes" is not abused and protect a person when they may not be a danger to self or others.

MS. MEADE responded that the court cannot protect people from filing frivolous cases, someone might file for a protective order without a reasonable belief other than for a noble purpose, and this law does not stop that from taking place. Although, she advised, it does provide for a hearing and the hope is that the judge handling the case would sift through the evidence, or whatever is presented at the hearing, or in the petition, and make the proper decision based on the evidence. She said she suspects that a good number of the protective orders will be denied, but there are no repercussions for the filer.

4:23:11 PM

REPRESENTATIVE KOPP referred to [Sec. 6. AS 18.65.815(b)] page 3, line 21-23, which read as follows:

> (b) ... If the court finds by clear and convincing evidence that the respondent is a danger to self or other ...

REPRESENTATIVE KOPP, in response to Representative Reinbold's question, asked Ms. Meade to define the "clear and convincing evidence standard" and what the court would have to be convinced of in order to meet that standard.

MS. MEADE answered that there is not a magic number for the different standards of proof. Typically, a "preponderance of evidence" is more likely than not, which means over 50 percent. For criminal convictions, the jury is supposed to be convinced "beyond a reasonable doubt." She commented that no one likes to put a number of that and she did not know whether it was 90 percent sure or 99 percent sure, but beyond a reasonable doubt. Somewhere in the middle, is "clear and convincing evidence," which is more than 51 percent and probably not 90 percent. The judge must have more evidence than in a regular civil matter, for example, and the judge then has to make the finding that the person is a danger to self or others by possessing, owning, purchasing, or receiving a firearm. She said that she imagines it would be a very fact laden hearing with the petitioner offering, for example, some of the threats they heard, some steps the person took, and issues with alcohol that come into play, because it would be a factual determination.

4:24:54 PM

REPRESENTATIVE KOPP asked Ms. Meade whether she would say that that the "clear and convincing standard of evidence" means that something is more substantially likely to be true than not.

MS. MEADE replied that that was a fair definition.

4:25:11 PM

CHAIR CLAMAN noted that the "clear and convincing evidence standard" is defined in the Alaska Civil Pattern Jury Instructions.

MS. MEADE responded that she was unaware of that fact.

CHAIR CLAMAN offered that if he was correct, his office would make a copy and distribute it to the committee before its next hearing.

4:25:31 PM

REPRESENTATIVE KOPP referred to [Sec. 6. AS 18.65.825(a)(1)] page 5, lines 16-17, which read as follows:

> (a)(1) ... if the court finds that the request is meritless on its face, the court may deny the request without a hearing ...

REPRESENTATIVE KOPP asked Ms. Meade to discuss the court's ability to make determinations on the possible frivolous complaints that were mentioned earlier.

MS. MEADE answered that this provision comes into place with modifications of an existing protective order. In that regard, she explained, if a protective order has been issued by the court involving the short-term and long-term protective order, a request can be made for modification. Most often, she related, the request for modification will come from the respondent asking to, at least, let them have a gun because they are a security guard, or it was affecting their employment, or they are in the military, or for some other reason. This provision reads that a court would have to hold a hearing on that modification request within 20-days after the respondent or petitioner requested the modification. Except, she said, if the court finds that the request to modify the existing order is meritless, the court does not have to hold a hearing.

4:27:03 PM

REPRESENTATIVE KOPP asked that if a protective order is not under modification and a request is made by a peace officer or a family member, could the court still find that the request is meritless on its face and not proceed forward if the standard of proof under HB 75 is not met.

MS. MEADE responded that when a petition is filed, the court can deny the petition, which often happens with domestic violence protective orders.

4:27:37 PM

CHAIR CLAMAN asked whether Ms. Meade had statistics on domestic violence protective orders and the number of times in which they are granted, and not granted.

MS. MEADE responded that she does have the statistics, except they are not in a format to submit to the committee, and she could briefly explain the statistics. Ms. Meade reiterated that the short-term hearing is held immediately and in many cases in Anchorage it is within one-half an hour, or within hours in other locations. The rate in which the court does indeed issue that domestic violence protective order is between 50-60 percent, some locations happen to have a higher rate of granting. Generally, she offered, that one-half of the domestic

violence protective orders are granted. With respect to the long-term order, the grant rate is approximately 20-23 percent. The reason being that for "a huge number of times" the petitioner does not show up because the parties have reconciled or decided not to request a further protective order.

CHAIR CLAMAN surmised that the lower rate includes when people come to court for a contested hearing and it is rejected, but also in cases in which someone filled out the form, checked both boxes, and did not show up for the long-term protective order hearing.

MS. MEADE agreed, and she said that the 20-23 percent is the grant rate, and other things can take place including dismissal, drop, or denial.

4:29:22 PM

REPRESENTATIVE EASTMAN asked that in a domestic violence protective order situation, what happens with the burden of proof if a petitioner filed a gun violence protective order against a respondent and they did not appear at the hearing, is the clear and convincing evidence simply whatever the petitioner had offered. In the event the respondent did not have the ability to take time off from work and believed the protective order to be frivolous, would the respondent have to appear at the hearing in order to maintain his right to own firearms, or would the judge simply look at the evidence.

MS. MEADE reiterated that there are two different burdens of proof, it is the preponderance of the evidence for the short-term order, and clear and convincing evidence for the long-term order. As to the short-term order, the respondent is usually not present and, in all likelihood, there would be little to no evidence to controvert what the petitioner had stated in their petition under oath, and they are sworn in when they testify, she explained. As to the long-term hearing, the court has to find by clear and convincing evidence, and it would behoove the respondent to attend the hearing because it is a factual determination. In the event only one side offers evidence, it would be easier for the judge not to find any counter evidence because the respondent was not there to present that evidence. She reiterated that it is a factual determination based on what is presented to the court.

4:31:56 PM

REPRESENTATIVE LEDOUX asked whether Ms. Meade had ever found that with domestic violence protective orders, it is simply a rush to the courthouse for whichever warring party arrives first.

MS. MEADE answered that there are stories in that regard, wherein a number of domestic violence protective orders can be abused by some couples and some individuals. Possibly, she commented, that is why there is an approximate 50 percent grant rate, and the court deals with those situations as they arise.

4:32:32 PM

REPRESENTATIVE LEDOUX asked how often the court ends up adjudicating two people who both filed for protective orders.

MS. MEADE replied that it does happen and she does not have data on the frequency, but from conversations, she knows that sometimes there are more or less simultaneously filed petitions. She opined that the statute reads something about dealing with them one at a time, there cannot be dueling petitions in the same proceeding.

4:33:15 PM

REPRESENTATIVE LEDOUX surmised that a court could conceivably deal with the first petition that was filed five-minutes earlier on an ex parte basis and the person who filed a petition five-minutes later "wouldn't get to be there for the first one?"

MS. MEADE responded that she does not know the answer to that question. In the event the person was standing outside of the courtroom door waiting for their hearing on their own petition, she was unsure how the judicial officer would handle that situation. She offered that the statute she had referred to simply read that the court may not grant protective orders against the petitioner and the respondent in the same action. She opined that she unsure whether a judge would tell the parties to come into the courtroom and talk it out and the judge would then determine who deserved the protective order.

4:34:25 PM

REPRESENTATIVE REINBOLD offered a scenario where a protective order takes place under HB 75, wherein a man had a Super Bowl party, had been drinking, his team lost, and he was grumpy and angry. At that time, someone believed the person was possibly a

danger to self or others, so the protective order was granted, and law enforcement confiscated all of the guns in the house. The home is now a gun-free zone, the person is robbed that night and there was no way for that family to defend themselves. She asked Ms. Meade to explain whether there is any liability because "the speech on Saturday night, I heard 98 percent of homicides were in gun-free zones."

CHAIR CLAMAN interjected that the topic of whether or not one of these protective orders creates a gun-free zone is actually not how the bill read, and that is a question to be addressed by the DOL. Ms. Meade could answer questions about the circumstances, but as to the gun-free zone topic, he was unsure that this bill creates the gun-free zone Representative Reinbold had described.

REPRESENTATIVE REINBOLD asked what the liability to the state is if the legislature creates a gun-free zone.

MS. MEADE referred to HB 75 [Sec. 18.65.830] page 5, lines 27-31 through page 6, line 1, and responded that if the protective order is issued, the person must turn in their guns within 24-hours, which is a bit different from someone seizing the person's guns.

4:36:40 PM

REPRESENTATIVE REINBOLD said that "it says without notice they're going to take them."

MS. MEADE commented that in any event, the person must surrender their guns within 24-hours. As to Representative Reinbold's question regarding liability, typically judges have judicial immunity if they act within the scope of their duties in a manner that is not blatantly unreasonable, judges are protected from individual liability. As to whether someone could sue the state, she said she did not feel qualified to answer that question.

REPRESENTATIVE REINBOLD added that "Let's just say they went walking outside, they don't have guns to protect themselves, they got attacked by a bear." She said her point was the right to defend themselves.

CHAIR CLAMAN pointed out that Representative Reinbold's question was more about the constitutional right discussion that took place with the attorney general and this line of questioning is beyond the scope of what the court system is here to address.

MS. MEADE answered that she does not have an opinion on the constitutionality, or the risks, or the liability involved in Representative Reinbold's scenario. She commented that the court system is neutral on HB 75.

4:38:13 PM

REPRESENTATIVE EASTMAN surmised that if someone living in rural Alaska was to receive this protective order against them and their firearms were confiscated, and they were eaten by a bear or a wolf, the state would incur no liability.

MS. MEADE deferred to the Department of Law (DOL).

CHAIR CLAMAN noted that Representative Eastman was well beyond the areas within which the committee had requested comments from the court system.

4:39:20 PM

REPRESENTATIVE LEDOUX asked whether anyone would be testifying to explain how the bill may work in practice. She said she was trying to determine whether, when someone receives this protective order, they specify by serial number how many guns are in the house, the type, or the make, because it appears that all the person has to do is come back and say that "he's gotten rid of all of the guns."

CHAIR CLAMAN noted that depending on what is accomplished today, the committee could continue these discussions on Friday because these questions may be better directed to law enforcement or organizations involved with domestic violence issues.

CHAIR CLAMAN asked Stacie Kraly to respond to how a gun violence protective order relates to a civil commitment motion under Title 47. He noted that he is particularly interested in the following: who decides whether a person meets the legal standard for civil commitment; what is the role of psychiatrists/psychologists and others in the civil commitment; and whether that plays a part in the gun violence protective orders under HB 75.

4:41:26 PM

STACIE KRALY, Chief Assistant Attorney General, Statewide Section Supervisor, Human Services Section, Civil Division

(Juneau), Department of Law, opined that there is not a parallel as to this particular statute in the sense that they do not interact with each other. She explained that a civil commitment can only be granted in the State of Alaska when a person is suffering from a diagnosable mental illness, through the Diagnostic and Statistical Manuel of Mental Disorders (DSM), and it has been alleged that they are a threat to self or others, or that they are gravely disabled, both of which are defined under Title 47.30. In the context of a civil commitment, there is a two-pronged approach not unlike the protective order issue. There is the ex parte phase where an individual suffering from a mental illness meets the criteria of threat to self or others or is gravely disabled. She explained that any individual in the State of Alaska can contact the judicial officer on-call at the courthouse and present evidence to that officer as to whether or not an ex parte order should be granted, and most generally the contact to the court is by a community mental health provider. The ex parte order is a time-limited order for 72-hours which allows an individual to be held at a designated treatment or evaluation facility, such as Alaska Psychiatric Institute (API) in Anchorage or Bartlett Regional Hospital in Juneau. The person, she related, is held up to 72-hours and the 72-hours does not include weekends or holidays by statute. In the event, during those 72-hours, the person stabilizes to the point that they are no longer gravely disabled or a threat to self or others, or it is determined that the person is not suffering from a mental illness, by law the person is required to be released from the hospital.

4:43:30 PM

MS. KRALY explained that during those 72-hours, the person is evaluated every 24-hours by the community mental health system and evaluated by the psychiatrist or the mental health professionals in which the person was admitted. During those 24-hours, if at any point the person fails to meet the commitment criteria, the person must be released by statute. In the event, during those 72-hours, it is determined that a person is not stabilizing and the person meets the commitment criteria, a 30-day petition can be filed. She explained that the 30-day petition must be signed by two mental health professionals as defined in statute, one of whom must be a psychiatrist. The court is then petitioned by stating that the person is mentally ill, is at risk of hurting self or others, and/or is gravely disabled. That petition then leads to an evidentiary hearing before a superior court judge or a magistrate judge, depending on the person's location, the person is appointed counsel and a

robust evidentiary hearing ensues. The standard for commitment at that point is clear and convincing evidence, which is a higher level of evidence that the commitment criteria was met. In the event the commitment criteria was met, the person would be committed for up to 30-days. She said that at any point during the 30-days the person stabilizes and no longer meets that criteria wherein the person is no longer gravely disabled and is no longer a threat to self or others, the person must be released from the hospital. As time progresses and the person does not stabilize, a petition can be filed, before the 30-days is up, for a 90-day commitment which is the exact same standard, although, the person is entitled to a jury trial at that point. At the end of the 90-days, a petition can be filed for a 180-day commitment subject to judicial review and jury trial. The person has received appointed counsel during the process of the 30-day commitment and forward, she explained.

4:45:54 PM

CHAIR CLAMAN asked Ms. Kraly to compare the difference between Title 47 civil commitment, and competency evaluations under Title 12.

MS. KRALY responded that the Title 12 competency evaluation process is found under AS 12.47.100, which Ms. Kraly paraphrased as follows:

> A defendant in a criminal proceeding who as a result of mental disease or defect is incompetent because the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense may not be tried, convicted, or sentenced for the commission of a crime so long as the incompetency exists.

MS. KRALY added that within that context, the issue can be raised that the person is incompetent to stand trial on their behalf or through appointed counsel, or the court can say that it sees some red flags and it wants the person evaluated. In the event that happens, the individual is evaluated to determine whether they are competent to stand trial. It does not tie into, in any way, shape, or form, a Title 47 determination until it is determined, by a medical evaluation, that the person is incompetent to stand trial because they do not understand what is going on and they cannot assist in their own defense. The statute contemplates that the person is sent to API for a period of time in order to restore their competency, and if competency

is restored, the person can be charged with the crime and go through the criminal proceedings. In the event competency is not restored and it is determined, after a period of evaluation and attempts to restore competency, that competency cannot be met, the individual is either released from API or there is a provision that could then, by statute, trigger a Title 47 evaluation. The statute does indicate that if a person is determined not to be competent and they cannot be restored, that it is a per se finding that the person suffers from a mental illness and they meet the initial standards for a civil commitment. Which, at that time, then triggers all of the processes she previously identified in terms of the court appointment, the evidentiary hearing, and the person must still establish all of the other predicates for a civil commitment, she said.

4:48:21 PM

REPRESENTATIVE LEDOUX asked whether all civil commitments require a diagnosis of mental illness.

MS. KRALY responded that the standard is that a person must be suffering from a mental illness, be a threat to self or others, or gravely disabled.

4:48:44 PM

REPRESENTATIVE LEDOUX offered a scenario of someone walking out on a high bridge and threatening to jump off of the bridge but is saved by law enforcement by grabbing the person. There must be some period of time in which they are committed without a diagnosis of mental illness because it is presumed a psychiatrist is not standing there with the police, she related.

MS. KRALY agreed that Representative LeDoux was correct, and she explained that during the 72-hour ex parte phase, there is still a predicate that the petitioner has probable cause to believe a person is suffering from a mental illness. It may have been an acute depressive episode and the person had not been diagnosed as a schizophrenic for the last 15-years of their life. In that context, she explained, the premise is that the petitioner advises the court that it is their belief that this person suffers from a mental illness and they are a threat to themselves because they were threatening to commit suicide. At that point, she noted, an ex parte order is granted and within that provision, there is a 72-hour period not including weekends and holidays, to evaluate whether there truly is a significant

mental illness and that the person is still a threat to self or others. She pointed out that there is that initial 72-hour phase wherein the person can be evaluated by a psychiatrist to determine whether the person needs to be further hospitalized.

4:50:45 PM

REPRESENTATIVE LEDOUX asked what happens if the psychiatrist determines that a person is a threat to self or others, but they are not mentally ill.

MS. KRALY responded that that situation does happen as not all civil commitments and petitions for commitment are granted. Sometimes, she explained, they are granted despite the fact that a person may have a diagnosis of a mental illness but are determined to not be gravely disabled. The judge can evaluate and determine that the person is not suffering from a mental illness and thus, there is no basis within which to commit a person under this statute, she said.

4:51:29 PM

REPRESENTATIVE LEDOUX asked whether a finding could be made that someone posed a threat to self but they are not actually mentally ill.

MS. KRALY replied that she believes a finding could be made, and the person is released.

4:51:56 PM

REPRESENTATIVE REINBOLD related that if weekends and holidays are not included, these people could be civilly committed for 5-6 days.

MS. KRALY responded that Representative Reinbold was correct in that the individual could be in the hospital for up to five days, but a civil commitment finding, a 30-day petition, has significant collateral consequences to an individual. Therefore, she explained, the idea is to avoid individuals from being civilly committed and to provide individuals with the opportunity to recognize the issues in their lives and make their own voluntary decisions about treatment and commitment. For example, she said, in the event the full 72-hours were not given to a person, or a person comes in on Friday and the hearing is on Monday, the person is not given the opportunity to stabilize to the point that they avoid these collateral

consequences of a civil commitment, which could have long-term impacts on their employment and so forth.

4:53:33 PM

REPRESENTATIVE REINBOLD pointed out that she has known people who were "put into "McLoughlin" and they cut off from their families which triggered distress, anxiety, sleep disorders, and so forth. She asked how to define the standards of mentally ill.

MS. KRALY responded that mental illness is defined through the Diagnostic Manual (DSM) 5th version, which is a compendium of diagnoses that have been evaluated and peer reviewed by a myriad of mental health professionals, psychiatrists, doctors, clinicians, and so forth, who have identified what constitutes a mental illness.

4:55:24 PM

REPRESENTATIVE REINBOLD offered that "some research shows 80 percent of diagnoses are wrong," and some of the acceptable behaviors today were considered mentally ill 50-years ago. She asked whether "there is going to be a standard or is it a moving target" where there are options to change the definition by the government.

MS. KRALY answered that the standard for mental illness is the standard that applies to civil commitments under AS 47.30. She opined that she does not believe HB 75 contains a requirement that the person be identified as mentally ill. This is not a mental illness standard, it is a threat to self or others standard, so mental illness does not play into whether this gun violence protective order can be granted.

4:56:45 PM

REPRESENTATIVE EASTMAN offered a scenario where a protective order was granted incorrectly and the person should not have been issued the order in the first place, or the person fixed whatever was wrong and the protective order was no longer necessary. He asked how hard it is for the person to have the protective order quashed.

CHAIR CLAMAN pointed out to Representative Eastman that as to a gun violence protective order or a domestic violence protective order, Ms. Kraly does not have expertise on that subject.

4:57:19 PM

REPRESENTATIVE LEDOUX commented that she is more interested in the definition of mental illness and would speak with Ms. Kraly after the close of this hearing.

[HB 75 was held over.]

4:59:02 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:59 p.m.