

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 28, 2018

1:06 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

COMMITTEE CALENDAR

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

SENATE BILL NO. 93

"An Act relating to security freezes on the credit reports or records of incapacitated persons and certain minors."

- HEARD & HELD

HOUSE BILL NO. 367

"An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

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
03/14/18	(H)	Heard & Held
03/14/18	(H)	MINUTE(JUD)
03/16/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/16/18	(H)	Heard & Held
03/16/18	(H)	MINUTE(JUD)
03/19/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/19/18	(H)	Scheduled but Not Heard
03/26/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/26/18	(H)	Scheduled but Not Heard
03/26/18	(H)	JUD AT 7:00 PM GRUENBERG 120
03/26/18	(H)	Heard & Held
03/26/18	(H)	MINUTE(JUD)
03/28/18	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: SB 93

SHORT TITLE: CREDIT REPORT SECURITY FREEZE

SPONSOR(s): SENATOR(s) COGHILL

03/13/17	(S)	READ THE FIRST TIME - REFERRALS
03/13/17	(S)	L&C
03/28/17	(S)	L&C AT 9:00 AM BELTZ 105 (TSBldg)
03/28/17	(S)	Bill Postponed to 1:30 p.m. 3/28/17
03/28/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/28/17	(S)	Heard & Held
03/28/17	(S)	MINUTE(L&C)
04/04/17	(S)	L&C RPT 5DP
04/04/17	(S)	DP: COSTELLO, HUGHES, STEVENS, MEYER, GARDNER

04/04/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)
 04/04/17 (S) Moved SB 93 Out of Committee
 04/04/17 (S) MINUTE(L&C)
 04/10/17 (S) TRANSMITTED TO (H)
 04/10/17 (S) VERSION: SB 93
 04/11/17 (H) READ THE FIRST TIME - REFERRALS
 04/11/17 (H) L&C
 04/17/17 (H) L&C AT 3:15 PM BARNES 124
 04/17/17 (H) Heard & Held
 04/17/17 (H) MINUTE(L&C)
 01/19/18 (H) L&C AT 3:15 PM BARNES 124
 01/19/18 (H) Moved SB 93 Out of Committee
 01/19/18 (H) MINUTE(L&C)
 01/22/18 (H) L&C RPT 6DP 1NR
 01/22/18 (H) DP: SULLIVAN-LEONARD, , WOOL, BIRCH,
 KNOPP, KITO
 01/22/18 (H) NR: JOSEPHSON
 03/19/18 (H) JUD REFERRAL ADDED AFTER RLS
 03/28/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 367

SHORT TITLE: NATIVE CORP. LIABILITY FOR CONTAMINATION
 SPONSOR(S): REPRESENTATIVE(S) MILLETT

02/21/18 (H) READ THE FIRST TIME - REFERRALS
 02/21/18 (H) RES, JUD
 02/26/18 (H) RES AT 1:00 PM BARNES 124
 02/26/18 (H) Heard & Held
 02/26/18 (H) MINUTE(RES)
 02/28/18 (H) RES AT 6:00 PM BARNES 124
 02/28/18 (H) Moved HB 367 Out of Committee
 02/28/18 (H) MINUTE(RES)
 03/07/18 (H) RES RPT 5DP 2AM
 03/07/18 (H) DP: TALERICO, LINCOLN, JOHNSON, TARR,
 JOSEPHSON
 03/07/18 (H) AM: PARISH, RAUSCHER
 03/28/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

CAPTAIN DAN LOWDEN, Deputy Commander
 Division of Alaska State Troopers
 Department of Public Safety
 Anchorage, Alaska

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

MATTHEW HIGHTOWER, Sergeant
Alaska State Troopers
Department of Public Safety
Fairbanks, Alaska

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

CAPTAIN ANDREW MERRILL
Village Public Safety Officers (VPSO)
Alaska State Troopers
Department of Public Safety
Anchorage, Alaska

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

RYNNIEVA MOSS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of SB 93, presented the legislation and offered a sectional analysis.

HANS RODVICK, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 367, presented the legislation and answered questions.

HALLIE BISSETT, Executive Director
Alaska Native Village Corporation Association (ANVCA)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 367, testified.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law
Juneau, Alaska

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

ACTION NARRATIVE

[1:06:02 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Claman, LeDoux, Kress-Tomkins, Eastman, Reinbold, Kopp, and Stutes were present at the call to order.

HB 75-GUN VIOLENCE PROTECTIVE ORDERS

[1:06:37 PM](#)

CHAIR CLAMAN announced that the first 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." [Before the committee was proposed committee substitute (CS), Version 30-LS0304\R, Martin, 3/26/18, adopted by the committee during the 3/26/18, 7:00 p.m. meeting.]

[1:07:49 PM](#)

CHAIR CLAMAN asked Captain Dan Lowden whether, in terms of standard procedure for state troopers and VPSOs, there is a difference in how domestic violence protective orders are served today, and to describe the general practice when serving domestic violence protective orders.

[1:08:32 PM](#)

CAPTAIN DAN LOWDEN, Deputy Commander, Division of Alaska State Troopers, Department of Public Safety, responded that this question is best answered by Sergeant Matthew Hightower.

[1:09:18 PM](#)

MATTHEW HIGHTOWER, Sergeant, Alaska State Troopers, Department of Public Safety, answered that there is no difference between how an Alaska State Trooper and or a Village Public Safety Officer (VPSO) would serve a domestic violence protective order. He explained that the domestic violence protective order is entered into the Alaska Public Safety Information Network (APSIN) database as well as its Records Management System (RMS),

and they serve the respondent with little delay to no delay, if possible.

1:09:47 PM

CHAIR CLAMAN asked whether the department typically sends one state trooper or VPSO out to serve a domestic violence protective order, or whether the service is typically a team of two officers.

MR. HIGHTOWER responded that it depends upon who is being served and whether the division has any prior knowledge of possible officer safety concerns. The division may choose to go with more than one or more than two officers, but typically, he said, the order is served by either one state trooper, court service officer, or VPSO.

1:10:27 PM

CHAIR CLAMAN asked whether there is a difference between rural settings and urban settings in terms of the standard practice of the state troopers.

MR. HIGHTOWER responded that there is not a particular difference, although it takes a bit more time in rural settings. Typically, (indisc.) protective order in the same day and if there is no VPSO in the village, there may be a delay in the service of the protective order due to air flights or weather delays, and so forth.

1:10:56 PM

CHAIR CLAMAN offered a scenario wherein law enforcement had knowledge that the respondent being served a domestic violence protective may have a firearm, and he asked how that knowledge would impact practices.

MR. HIGHTOWER asked Chair Claman to clarify his question.

1:11:29 PM

CHAIR CLAMAN asked whether the state troopers assume everyone being served a domestic violence protective order probably has a firearm in the house.

MR. HIGHTOWER answered in the affirmative.

[1:11:38 PM](#)

CHAIR CLAMAN noted that based on Mr. Hightower's understanding of CSHB 75, how would a gun violence protective order compare to a domestic violence protective order when serving those orders.

MR. HIGHTOWER answered that there would not be any difference other than the actual document that is being served on the respondent. He added that the state troopers follow the provisions of the protective order and remove any property under that order.

[1:12:14 PM](#)

CHAIR CLAMAN asked the frequency that state troopers and VPSOs are involved in serving domestic violence protective orders currently.

MR. HIGHTOWER deferred to Captain Dan Lowden.

[1:12:35 PM](#)

CAPTAIN LOWDEN answered that in 2017, 1,360 domestic violence protective orders were served, and the state troopers received approximately 1,937 requests. As to the stalking orders, he advised that 265 protective orders were served, "and we had received an additional 66 orders for a total of 344 stalking orders received in 2017."

[1:13:28 PM](#)

CHAIR CLAMAN requested a description of the Department of Public Safety's (DPS) policy regarding the storage of weapons.

CAPTAIN LOWDEN responded that the process for taking a weapon into custody is as follows: the serial number is run through the state and national databases to determine whether the weapon was stolen; and all information regarding that weapon is recorded, such as, the make, model, caliber, barrel length, serial number, and so forth. Under the right circumstances, he explained, if the person "is there" and the state troopers know the owner, they would probably give the person a receipt for the weapon "if we had it in our custody, but not all of the time." He continued explaining the storage of weapons process as follows: after returning to the office with the weapon, it would be packaged in specially designed boxes for the storage of weapons in the evidence room, enter that weapon into the RMS system,

list it with the associated incident number, and place it in the evidence locker for storage.

[1:15:05 PM](#)

CHAIR CLAMAN asked that if this legislation becomes law, whether the state troopers would have enough storage capacity to manage the weapons storage that may be required under gun violence protection orders.

CAPTAIN LOWDEN answered that the difficulty in pinning the number down to a definitive answer is that this legislation moves into new territory and the number of weapons to expect is unknown, but storage is at capacity in many of the rural evidence lockers. Different commanders have advised, he said, that they are using alternative storage for items already in storage, and the Bethel State Troopers are using one of their holding cells to store firearms. He opined that it probably would not take many weapons for the division to look at some sort of alternative storage capacity in handling the weapons.

[1:16:19 PM](#)

CHAIR CLAMAN surmised that it would depend on the number of gun violence protective orders which were served in one year statewide, as to the different management problems it would create.

CAPTAIN LOWDEN replied that Chair Claman was correct, it is based on the number of protective orders received and the number of weapons a particular person may possess. He opined that many folks in Alaska probably own dozens or scores of weapons.

[1:16:56 PM](#)

CHAIR CLAMAN asked whether the provision allowing custody of the weapons by a court approved third-party would provide some relief for the potential storage use issues.

CAPTAIN LOWDEN answered that court approved third-party possession of the weapons could possibly assist, except it would be difficult for a person to obtain court approved third-party possession within the 48-hour time period, or the instantaneous seizure under the ex parte order. Although, he acknowledged, it would still be helpful for a court approved third-party to come forward and take the weapons into their custody within a week or two weeks of the seizure.

1:18:06 PM

CHAIR CLAMAN requested information as to whether the state troopers or VPSOs are involved in the warrantless seizure of weapons from individuals.

CAPTAIN LOWDEN responded that weapons are seized without a warrant under several conditions and exemptions, such as: whether there are existent circumstances to the search warrant rules; a weapon in plain sight, such that the state troopers make contact with someone and a weapon is sitting on the coffee table; weapons visible via gun racks in pickup trucks would be seized; and a pat down search revealing a weapon. Under current law, a person must notify the police officer during contact that they are carrying a concealed weapon and allow the officer to secure the weapon if they so desire during the contact, in the event something arose that caused the police officer concern or the person was arrested, the weapon would not be returned under this legislation. Normally, on routine contacts, the weapon would be given right back to the person at the scene. He reiterated that there are several ways within which the state troopers seize weapons without a warrant.

1:20:23 PM

REPRESENTATIVE EASTMAN offered a scenario where the state troopers encountered an individual who had not committed a crime but was in possession of a weapon and it was not advisable for that person to continue possessing that weapon. He requested the authority or justification used to secure that weapon and keep it for a period of time after making contact with the person and the call was over.

CAPTAIN LOWDEN opined that there is not a lot of statute authority to keep weapons under that description. He noted that "very narrowly" if there was concern about that person's wellbeing to the point of a Title 47 commitment and were hospitalized for a 72-hour observation, the situation might be such that the state troopers would secure the weapon for safekeeping at the scene, "because there's no one there to hand it off to."

1:22:04 PM

REPRESENTATIVE REINBOLD requested a description of why receipts are sometimes given or not given to the person, and whether it is difficult to return the seized weapon back to the owner.

CAPTAIN LOWDEN replied that when receipts are given or not given to folks depends upon the situation, and at some point, a person would most likely be given a receipt. There may be a situation, he offered, where a person and their weapons were taken into custody, and the state trooper would book the person into jail before the person would receive a receipt for the weapon. In the event a search warrant is served on a house, the state troopers are required to leave a receipt for all of the removed items at that time. He reiterated that the receipt is situationally dependent and it is not a question of choosing not to give someone a receipt, it simply depends upon the circumstances.

[1:23:48 PM](#)

REPRESENTATIVE REINBOLD offered concern that not giving a person a receipt for their guns depends upon the situation, especially in warrantless cases under this bill. She noted that no one wants guns in the wrong hands, but the constitution clearly states that people have the right to bear arms. She asked Captain Lowden's opinion as to how state troopers can justify confiscating those guns after swearing to uphold the constitution.

CHAIR CLAMAN, in response to Captain Lowden, explained that Representative Reinbold's question is about Second Amendment rights and how Captain Lowden addresses that issue when making a decision to seize weapons.

CAPTAIN LOWDEN answered that the constitutionality of any law is decided by the courts. The state troopers receive direction through the attorney general, and at this time he is not in a position to advise Representative Reinbold what those opinions might be regarding this legislation. He commented that he knows the Department of Law reviewed this bill.

CHAIR CLAMAN interjected that Representative Reinbold's question was not specific to this bill, but broadly related to warrantless seizures and taking possession of a firearm in general.

[1:26:15 PM](#)

REPRESENTATIVE REINBOLD asked whether Captain Lowden takes an oath to defend and uphold the constitution.

CHAIR CLAMAN remarked that Captain Lowden does take an oath to defend and uphold the constitution, and he could respond to the question about seizing weapons without a warrant.

CAPTAIN LOWDEN reiterated that there are exceptions to the search warrant requirement, and circumstances where the state troopers might remove a weapon from a person without a search warrant. For example, he further reiterated, when locating a weapon on a person during a pat down; at the time of arrest; or when the weapon is in plain view; the state troopers are allowed to seize the weapon at that time.

[1:27:16 PM](#)

REPRESENTATIVE KOPP asked Captain Lowden to explain the process of entering a weapon into (indisc.) for safekeeping or as evidence, what forms are used, whether the forms are in triplicate, and whether the state troopers can always get a receipt back to someone after the fact.

CAPTAIN LOWDEN responded that it has been a long time since he worked the street and the state troopers now have a computerized RMS, but he would attempt to answer Representative Kopp's question. In his day, he said, physical paper forms with carbon paper were used to document the seizure. Currently, he pointed out, there are computer systems and some, if not most, of the troopers have printers in their cars to print out documents. Unfortunately for many troopers, especially those in rural Alaska, they do not have instant access to that sort of portable technology and the ability to print a receipt at that moment. He explained that the data would be entered through the computer system with the serial number, make, model, barrel length, and so forth, and the paper is copied at that point for the person to use as a receipt, or for the use of any number of people who would receive that copy.

[1:29:25 PM](#)

REPRESENTATIVE KOPP referred to the rural areas of Alaska where technology is more limited, and he asked whether those areas are more likely to have the previously described property forms that list the barrel length, serial number, caliber, and all of the identifying blocks listed on the property forms to fill out in

pen. He asked whether Captain Lowden was saying that those have been done away with entirely

CAPTAIN LOWDEN responded that he was unaware whether the folks in rural Alaska are using paper as a backup and deferred to Captain Andrew Merrill.

1:30:18 PM

CAPTAIN ANDREW MERRILL, Division of Village Public Safety Officers (VPSO), Alaska State Troopers, Department of Public Safety, responded that currently, VPSOs and state troopers in Western Alaska have access to the records management system (RMS) and that information is input directly into the system. As to the issue of receipts, he related that it depends upon the officer at the scene who views the firearm and whether they have access to any hard-copy forms. Although, he is not aware of troopers carrying hard-copy triplicate forms or other forms to give to a person. Many times, he explained, it is simply a note in their notebook describing the property seized, and some troopers will rip a notebook page out, describe the property seized, and the trooper and individual will sign the document. He related that a receipt depends upon the availability of computers, of paper, and the time of day or night, as there are many variables impacting how a receipt is provided to an individual.

1:31:35 PM

REPRESENTATIVE KOPP referred to the warrantless seizure of firearms and offered a scenario where the state troopers responded to a residence or business where a crime had not been committed, but the state troopers encounter an angry or upset individual with a weapon under their immediate control. He asked Captain Lowden to describe circumstances where the weapon may be seized for safekeeping until that situation is, at least, stabilized.

CAPTAIN LOWDEN answered that there may be circumstances where the state troopers receive a call that someone was threatening to cause harm to self, or they were distraught and in possession of a weapon, the weapon would be seized for safekeeping for the safety of everyone at the time. Although, he said, the state troopers try to keep that situation to a minimum and they would look for a possible family member [to take possession of the weapon] or some other way to keep everyone safe.

1:33:14 PM

REPRESENTATIVE LEDOUX offered a scenario of someone writing on Facebook, "I am really mad at the world. I think I'm going to go into a school and start shooting people." She asked whether that person would be taken into custody and their guns seized, or move for an involuntary commitment, or what, if anything, would Captain Lowden do currently.

CAPTAIN LOWDEN reiterated that it has been a long time since he worked the street, but he wants to make clear that the state troopers are not out there monitoring people's Facebook pages at random. In the event someone brought this post to the attention of the state troopers, they would make an effort to make contact the person and through interviewing the person, their family, their friends, and so forth, gather an understanding of what was going on with that person and why they made that post. Currently, in the event the situation was such that the troopers believed someone was a danger to self or others, and may suffer from some mental difficulties, the troopers would move for a Title 47 commitment to have that person taken to a facility for evaluation. As to whether the weapons would be seized at that point would depend upon the circumstances and the situation. In the event the situation was such that the person was living with other family members and those family members convinced the troopers that they could properly secure the firearms, the troopers may very well look at all of the options and possibly leave the firearms with a family member. The first thing the troopers would do is find the person and try to determine what was actually taking place, he reiterated.

1:36:31 PM

REPRESENTATIVE LEDOUX described that not all people who shoot other people necessarily have a mental illness, they are quite sane and are simply bad people. She asked Captain Lowden to describe the process for someone who the troopers believe will probably shoot someone except they are not mentally ill and they have not yet committed a crime.

CAPTAIN LOWDEN said that he believes he understands Representative LeDoux's question, but where he might depart from Representative LeDoux is that most likely a crime would have been committed. He paraphrased an Alaska law, as follows:

A prohibited act of threatening bodily harm to people with dangerous instruments.

CAPTAIN LOWDEN explained that "You don't actually have to hurt them, you don't have to shoot at them, or those sorts of things," but there is the ability to make an arrest and charge someone for making threats to harm other people.

[1:38:26 PM](#)

REPRESENTATIVE LEDOUX said that she assumes the threat to harm someone is that if she wrote on her Facebook page, for example, "I'm going to shoot Representative Eastman," and Representative Eastman saw that Facebook post, and it was a threat to someone specifically. She then offered that there is a generalized post, "I don't like the world. I'm just going to out and kill a few people" which is not a threat to shoot anyone in particular, and the person they shoot may not even see this threat. She asked whether those scenarios would come under this statute.

CAPTAIN LOWDEN opined that it probably would [come under this statute] depending upon what the words were and the other actions the person took to communicate that threat. He said that he does not believe it has a requirement that the threat be made against a specific person, but rather the circumstances. He related that he is not suggesting that the people who make these threats are posting in a light manner, such as the people who make stupid comments in the TSA line and are pulled out of line immediately and questioned about their comments. The threat needs to be to a specific person, he stated, but the state troopers would have to look at the totality of the whole situation and, as in many cases, the troopers would have to make a judgement call on whether that behavior was criminal.

[1:41:00 PM](#)

REPRESENTATIVE LEDOUX asked Chair Claman whether someone from the criminal division of the attorney general's office could address that question.

CHAIR CLAMAN advised that her request could not be addressed today because the committee was moving to other bills, and suggested that the following cites may address many of the issues Captain Lowden addressed, as follows:

AS 11.56.807. Terroristic Threatening in the First Degree.

(a) A person commits the crime of terroristic threatening in the first degree if the person knowingly sends or delivers a bacteriological, biological, chemical, or radiological substance or an imitation bacteriological, biological, chemical, or radiological substance and, as a result,

(1) places a person in reasonable fear of physical injury to any person;

(2) causes evacuation of a building, public place or area, business premises, or mode of public transportation; or

(3) causes serious public inconvenience.

(b) In this section,

(1) "bacteriological, biological, chemical, or radiological substance" means a material that is capable of causing serious physical injury;

(2) "imitation bacteriological, biological, chemical, or radiological substance" means a material that by its appearance would lead a reasonable person to believe that it is capable of causing serious physical injury.

(c) Terroristic threatening in the first degree is a class B felony.

AS 11.56.810. Terroristic Threatening in the Second Degree.

(a) A person commits the crime of terroristic threatening in the second degree if the person knowingly makes a false report that a circumstance

(1) dangerous to human life exists or is about to exist and

(A) a person is placed in reasonable fear of physical injury to any person;

(B) causes evacuation of a building, public place or area, business premises, or mode of public transportation;

(C) causes serious public inconvenience; or

(D) the report claims that a bacteriological, biological, chemical, or radiological substance that is capable of causing serious physical injury has been sent or is present in a building, public place or area, business premises, or mode of public transportation; or

(2) exists or is about to exist that is dangerous to the proper or safe functioning of an oil

or gas pipeline or supporting facility, utility, or transportation or cargo facility; in this paragraph, "oil or gas pipeline and supporting facility" and "utility" have the meanings given in AS 11.46.495 .

(b) Terrorist threatening in the second degree is a class C felony.

[HB 75 was held over.]

SB 93-CREDIT REPORT SECURITY FREEZE

[1:41:48 PM](#)

CHAIR CLAMAN announced that the next order of business would be SENATE BILL NO. 93, "An Act relating to security freezes on the credit reports or records of incapacitated persons and certain minors."

[1:42:39 PM](#)

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, advised that SB 121 [passed in the Twenty-Ninth Alaska State Legislature] was enacted into law [9/17/16] and it provided a subsection in existing statutes for security freezes for minors. Although, she explained, the legislation did not set up a process for creating a security freeze, hence SB 93 creates that system. Ms. Moss paraphrased the sectional analysis as follows [original punctuation provided]:

Section 1. Distinguishes difference between security freezes for adults and security freezes for a "protected customer" AND Defines a "protected customer" as a person who is incapacitated or under 16 years of age.

[1:43:37 PM](#)

MS. MOSS explained that an incapacitated person is a person who is unable to receive and evaluate information and communicate decisions, and they need assistance from someone, usually with a court order, such as a legal guardian or legal representative.

MS. MOSS offered that the age of 16 was chosen because Senate Bill 121 covered minors up to the age of 18 years. However, 26 other states have reduced the age to 16 with the rationale that consumers at the age of 16 years typically begin working, own a

cell phone, have a bank account and; therefore, they have established some type of credit.

MS. MOSS advised that Sec. 2 is the meat of the bill which creates a system for security freeze for protected consumers. She noted that a credit freeze for a minor and an adult, while similar in name, in practice operate in very different manners. A credit freeze for an adult is placed to temporarily turn off the availability of an already established credit for that individual. The request could be due to identity theft and because a credit report was previously created by a lending agency, the credit report simply needs to be frozen and the process is immediate, she explained.

[1:45:12 PM](#)

MS. MOSS continued paraphrasing the sectional analysis as follows:

Sec. 2. Creates Article 2A (Security Freeze for Protected Consumer)

*45.48.300. Placement of security freeze. A consumer credit reporting agency is mandated to place a freeze on a protected consumer's report if:

(1) A protected consumer's representative requests one.

(2) The protected consumer's representative

(a) Submits the request in a manner specified by the agency

(b) Submits proof of identification of the protected consumer

(c) Submits proof of identification of the representative and proof of authority

(d) Pay the fee of not more than \$5.00.

*45.48.310. Record. If a protected consumer does not have a credit report with the agency, the agency will create a record for the protected consumer and place a freeze on it.

*45.48.320. Proof of identification and authority. Proof of identification includes:

Social security number or copy of SS card

Certified or official birth certificate

A driver's license or identification card issued by Division of Motor Vehicles

Other identification issued by a government agency

Proof of authority Includes:

A court order

A written, notarized statement expressly describing the authority that the representative has signed.

*45.48.330. Time of Placement of security freeze. The agency shall place the freeze on the credit report or record no later than 30 days after receiving the request.

*45.48.340. Operation of security freeze. Once a freeze is placed on the report or record, the agency cannot release information about the record without permission from the representative or consumer unless the freeze was placed based on misrepresentation of fact or the agency has received a request for removal of the security freeze.

*45.48.350. Duration of security freeze. A security freeze remains in effect until the representative requests the freeze be removed or if the agency determines the freeze occurred because of misrepresentation of facts.

*45.48.360. Removal of security freeze.

(a) The protected consumer or his or her representative can have a freeze removed by:

(1) Submitting a request in the manner prescribed by the agency

(2) Providing sufficient proof of:

(a) ID of protected consumer

(b) ID of representative

(c) authority for the representative

(3) Pay the agency a fee of not more than \$5.00

(b) The agency has not more than 30 days to remove the freeze

*45.48.370. Effect of material misrepresentation of fact. The agency may remove a security freeze or delete the record if the security freeze was obtained using a material misrepresentation of fact.

*45.48.380. Charges.

(1) A consumer credit reporting agency may not charge a fee more than \$5.00

(b) The agency has not more than 30 days to remove the freeze

*45.48.370. Effect of material misrepresentation of fact. The agency may remove a security freeze or delete the record if the security freeze was obtained using a material misrepresentation of fact.

*45.48.380. Charges.

(1) A consumer credit reporting agency may not charge a fee more than \$5.00

(2) The agency may not (shall not) charge a fee when:

the protected consumer's representative submits a police report, investigative report of complaint involving criminal impersonation in the 1st degree

the protected consumer is under the age of 16 and the agency has created a credit record for that consumer

*45.48.390. Exemptions. Under the following conditions a frozen report of a protected consumer will be made available to the requestor:

a person with a court order, warrant, or subpoena

a government agency establishing and enforcing child support orders

Dept. of Health & Social Services and its agents in investigating fraud

Dept. of Revenue and its agents when investigating or collecting delinquent taxes, unpaid court orders, or other statutory responsibilities

a credit file monitoring service the protected consumer is a subscriber to

the protected consumer or representative has requested a report

if the report of the agency consists entirely of information used solely for one or more of the following:

Criminal records information

Personal loss information

Fraud prevention or detection

Tenant screening

Employment screening

A person preparing a credit report for an inquiring bank or financial institution regarding account closures because of fraud, substantial overdrafts, automated teller machine abuse, or similar information regarding a protected consumer

*45.48.395. Definitions.

"consumer" an individual who is the subject of a credit report or credit score.

"consumer credit reporting agency" - a person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties, but does not include a person who issues reports.

"incapacitated person" - means a person whose ability to receive and evaluate information or to communicate decisions is impaired to the extent that the person lacks the ability to provide or arrange for the essential requirements for the person's physical health or safety without court-ordered assistance.

"proof of authority and identification" - proof of authority and identification required for a protected consumer's representative by the credit reporting agency to place a security freeze on the credit record or report.

"protected consumer" - a person who is an incapacitated person or under 16 years of age.

"record" - the record credit in AS 45.48.310, a record created by the agency and frozen.

"representative" - a person who has authority to act on behalf of a protected consumer.

"security freeze" - the restriction on access to a protected consumer's credit report or record.

Sec. 3. Transition.

This provision provides that security freezes put in place prior to the effective date of this Act, will remain enforced under the same statutes as they did when the freeze was placed on the record.

[1:50:16 PM](#)

MS. MOSS explained that every year in the United States, 1.3 million children's identities are stolen, and 50 percent of those children are under the age of six years. Thieves can obtain social security numbers in numerous ways wherein 26 other states recognized that something must be done, and this legislation is Alaska's attempt to protect children and their parents from identity theft and fraud, she offered.

[1:51:02 PM](#)

REPRESENTATIVE LEDOUX noted that if there was no credit report in the first place, how is a freeze established on something that does not exist.

MS. MOSS answered that this legislation creates a process whereby a parent can ask a credit reporting agency to create a credit report (indisc.). The reason being, she explained, if there is no credit report and no freeze, there is no way to know that someone had taken another person's social security number to have credit cards, loans, or other indebtedness in that person's name.

REPRESENTATIVE LEDOUX surmised, "If there is no credit report."

MS. MOSS answered in the affirmative.

[1:52:08 PM](#)

REPRESENTATIVE LEDOUX asked what happens logistically when a credit report is frozen and someone tries to obtain a credit card in the name of the person with a frozen credit report, and whether all sorts of lights and whistles go off.

MS. MOSS answered that that action sends a signal to the credit card company that a freeze is on this credit report. The credit companies probably read between the lines that someone is applying for a credit card in other person's name and social security number.

[1:52:54 PM](#)

REPRESENTATIVE EASTMAN offered a scenario where a father with a two-year old son filed for this credit report and froze his son's credit report. Except, the father forgot about it and when his son is 17 years of age, he [applies for credit] and all of the bells and whistles apply because the father forgot to inform his son of the credit freeze. He asked, in that scenario, whether it would make it harder for the son to "go about the normal things that 17 years olds do?"

MS. MOSS answered that the son was above the age of 16 years, so he has authority to lift the credit report freeze.

[1:53:34 PM](#)

REPRESENTATIVE EASTMAN offered the same scenario, except he changed it from a 17-year-old to a 15-year-old son.

MS. MOSS responded that with the approval of his parents, he could lift the credit report freeze. In the event of a family squabble, the son could apply to be emancipated, she opined.

[1:54:05 PM](#)

REPRESENTATIVE LEDOUX asked whether there is language in the bill that allows emancipated minors to either freeze or lift the credit report freeze.

MS. MOSS explained that an emancipated person is considered an adult.

[1:54:52 PM](#)

The committee took an at-ease from 1:54 p.m. to 1:55 p.m.

[1:55:13 PM](#)

MS. MOSS continued her response to Representative LeDoux that once a person is considered an emancipated adult, he/she goes by the provisions of state law that address credit freezes for adults. She then referred the committee to AS [45.]48.100 through 45.48.210.

[1:55:38 PM](#)

REPRESENTATIVE LEDOUX referred to [Section 1. Sec. 45.48.380(b)(2)(A)], page 5, line 9, which read as follows:

(A) the protected consumer is under 16 years of age; and

REPRESENTATIVE LEDOUX offered that rather than an adult with the definition of adult, the above cite does not appear to address the emancipated minor.

[1:56:11 PM](#)

CHAIR CLAMAN noted that the credit agencies are busy collecting people's data from all kinds of different sources, and in the event a person decides they do not like that data collection, adults can send out this notice advising credit agencies to put a freeze on their credit history, and the credit card companies can no longer research that person's credit. In theory, he said, those companies are collecting data on minors even though "we wished they weren't," and this bill essentially gives individuals and families the option of advising that they want to protect their child and put a freeze on their credit. This information basically advises credit agencies that their child is a minor and to not collect information. The purpose of this legislation is to primarily give families and parents the ability to protect their youth or someone who is disabled, he said.

MS. MOSS replied that Chair Claman was correct, and explained that once a person is emancipated, they are no longer defined as a protected consumer, they are an adult.

[1:57:38 PM](#)

REPRESENTATIVE EASTMAN asked how the bill handles the potentially delicate situation where the mother or father do not agree to the freeze at the time of the two-year old son's scenario, or one parent wants to unfreeze their child's credit report

MS. MOSS answered that there probably is not a clear answer, it may end up with a judge making that decision in a child support order.

CHAIR CLAMAN noted that in cases where the one parent freezes their child's credit on one day and pays the \$5.00 fee, and the next day the other parent unfreezes the child's credit and pays the \$5.00 fee. He suggested that if these actions occurred

often enough, there may be a point in which the \$5.00 fee would cause them to try to find a compromise.

[1:58:46 PM](#)

CHAIR CLAMAN opened public testimony on SB 93. After ascertaining no one wished to testify, closed public testimony on SB 93.

[SB 93 was held over.]

HB 367-NATIVE CORP. LIABILITY FOR CONTAMINATION

[1:59:19 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 367, "An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

[1:59:45 PM](#)

HANS RODVICK, Staff, Representative Charisse Millett, Alaska State Legislature, advised that HB 367 deals with issues going back to the 1971 Alaska Native Claims Settlement Act (ANCSA). At that time, he explained, as those lands were beginning to be conveyed to Native Corporations throughout the state, folks realized that portions of certain conveyed lands contained contamination prior to that conveyance. These issues began to be discussed by the Alaska Native communities in 1990s. In 1998, the United States Congress directed the Secretary of the Interior [Donald P. Hodel] to review the issue and report. That report found that approximately 650 sites were known to have been conveyed to Alaska Native Corporations under ANCSA, except the outcome of that report "didn't produce much, other than it surveyed the issue well, but no action was really taken." Approximately one decade went by and in 2014, the United States Congress mandated that the United States Department of the Interior update that inventory of contaminated lands. He explained that in 2016, the United States Department of the Interior completed its report and found that 500-plus sites required remediation and cleanup in order to truly resolve the issue. The largest party of those pre-transferred contaminated lands was found to be the United States Department of Defense. Subsequent to the 2016 report, he advised, and work with organizations, such as the Alaska Native Village Corporation Association (ANVCA) drafted this bill and also a bill at the

federal level. He explained that HB 367 will not solve the problem of cleaning up the lands, but it will help bring Alaska Native Corporations into a place where they are able to actually begin addressing these matters. Essentially, the intent is to remove liability from the Alaska Native Corporations which were transferred contaminated lands and, he stressed that the Alaska Native Corporations were unaware of those contaminations during the process of the conveyance of lands. The issue, he explained, is that under current state law, the Alaska Native Corporations would be liable for the cleanup, cost, and damages that may arise from those contaminated lands of which is addressed in this legislation to remove that level of liability.

2:03:05 PM

REPRESENTATIVE LEDOUX offered sympathy for this issue and asked why it is strictly limited to Alaska Native Corporation lands. She noted that Alaska has strict liability laws wherein someone can be completely innocent when something was conveyed to them, and they had absolutely no idea it was contaminated. In the event this legislature addresses this issue for one category of folks, she suggested possibly revisiting the entire law.

MR. RODVICK described the Alaska Native Claims Settlement Act (ANCSA) as a monumental piece of legislation in Alaska's history that involved 44 million acres of conveyed lands. He pointed out that it is not just the Alaska Native Corporations who are affected with contaminated lands, many of the villages and smaller corporations that, under the current liability state statutes, "could be honestly decimated" if found liable and had to deal with the contamination. Possibly, he offered, there is a conversation to be had in looking at other parties who are responsible for contamination, but the scope of this bill focuses on the Alaska Native Corporations.

2:04:48 PM

REPRESENTATIVE LEDOUX asked how it would work under this bill if, for instance, an Alaska Native Corporation received conveyed land through ANCSA and it then conveyed some of that land to a second party, and that party found that the land was contaminated. She asked whether this legislation would also immunize the second party.

MR. RODVICK related that he would have to get back to the committee with legal opinions in terms of Alaska Native

Corporations passing on conveyed lands, selling lands, or conveying it to other parties, if that second party would be relieved from liability. The intent of this legislation, he explained, is to focus on the corporations with contamination on their lands because those corporations want to help remediate these environmental disasters so they can move forward with their communities with responsible resource development or the use of their lands.

[2:06:12 PM](#)

REPRESENTATIVE LEDOUX commented that she would like to receive an answer to her question.

[2:06:19 PM](#)

REPRESENTATIVE EASTMAN asked when the last land grant was conveyed under ANCSA.

MR. RODVICK answered that he would have to research that question.

[2:06:35 PM](#)

REPRESENTATIVE EASTMAN referred to the conveyance of the last land grant and asked whether there are any circumstances where an Alaska Native Corporation or someone else would be in possession, control, or have some administrative responsibilities over the land, prior to it formally, officially, and legally, granted to them. He opined that if that is the case, rather than having the immunization start or the trigger begin when the land was granted, possibly a more appropriate trigger would be when the person received the land grant and came to possess or control or administer or manage the land.

MR. RODVICK opined that the process of conveying lands under ANCSA is ongoing because there is still land that has not been fully conveyed to the Alaska Native Corporations by particular parties. In terms of the word "grant" versus "convey," that issue was discussed in the House Resources Standing Committee, and he asked Representative Eastman whether that is what he is considering in terms of the actual timeframe for the removal of liability.

[2:08:06 PM](#)

REPRESENTATIVE EASTMAN referred to [Section 3, AS 46.03.822(n), page 3, line 1, which read as follows:

substance was present on the land at the time the land was granted.

REPRESENTATIVE EASTMAN clarified that he was asking whether the last three words of the bill, "land was granted," are appropriate and meet the intent of this legislation. He commented that if this only deals with "at the time the land was granted" and there is still land that has not yet been granted, "maybe it's not right to absolve someone of responsibility because they haven't been granted the land yet, if they are the ones who may already be aware or maybe contributed to some type of contaminants or something like that." In the event those folks are responsible in some manner, he said, he did not know whether what "we are trying to do" is remove them from liability simply because they have not yet been granted the land.

MR. RODVICK answered that it comes back to the difference between the definitions of "grant" and "convey." The lands were granted to the Alaska Native Corporations under ANCSA, but they have not yet been conveyed. He pointed out that those granted lands containing contamination before being actually conveyed are the lands this legislation addresses in removing liability, and the sponsor's office worked in conjunction with the Alaska Native Village Corporation Association when crafting this legislation, he said.

[2:09:52 PM](#)

CHAIR CLAMAN opened invited testimony on HB 367.

[2:10:16 PM](#)

HALLIE BISSETT, Executive Director, Alaska Native Village Corporation Association (ANVCA), described her background, and advised that she has served on the board of directors for Cook Inlet Region Incorporated since 2010 and she is clearly aware of the various contaminated lands. She described that one bit of contaminated land is located between the two major population centers of the Municipality of Anchorage and the Mat-Su, with Camp Mohawk in Eklutna that is currently contaminating Cook Inlet with Polychlorinated Biphenyls (PCBs). This is a real problem "right in our backyard" she described, and it cannot be ignored any longer. On 12/18/1971, the United States Congress passed the Alaska Native Claims Settlement Act (ANCSA) into law

and agreed to convey to 12 Alaska Native Regional Corporations and more than 200 village corporations, 44 million acres of land. To be clear, she expressed, the Alaska Native people gave up 88 percent of their traditional lands through ANCSA. The United States Congress directed that the United States Department of the Interior oversee the transfer of these lands (coughing) late 1980s it was realized that the transfer was of contaminated lands. The Alaska Native people did not know those lands were contaminated and the federal government did not hand over the documentation "letting us know what was out there. And, what is out there? We're talking about arsenic, unexploded ordinances, PCBs, among many other things."

[2:12:14 PM](#)

MS. BISSET, in response to Representative LeDoux's question as to why this legislation is limited to ANCSA, opined that it is limited to ANCSA "for the very fact that we gave up 88 percent of our traditional lands" in exchange for this settlement. The Alaska Native people were supposed to receive economically viable lands in exchange, and not lands that they were legally liable to cleanup. She stressed that a huge disservice was done to the Alaska Native people over these many years and this legislation is trying to remedy the situation by putting the legal liability shield in place to complete the inventory of the total sites out there. As was noted in the report, she offered, there are approximately 650 sites currently, but there are about 100 more sites that need to be evaluated to determine the exact condition of the land. She commented that if these events had taken place 20-30 times, she might think it was a mistake, but this has happened over 900 times. Therefore, something must be done about this and she offered that some of the effects of the contaminations as follows: people living on one side of the river are dying of a certain type of cancer and the people living on the other side of the river are not dying of this cancer; people are hanging glow-in-the-dark fish at their fish camps; and the people living in Unalakleet believe they are getting Parkinson's Disease from all of the PCBs being dumped into their water. This is a very real problem that needs to be cleaned up, the report identifies 94 "orphan sites," an orphan site means there is no intention to clean up the contamination. She stressed that the Alaska Native Village Corporation Association (ANVCA) would like to put the liability shield in place and begin cleaning up these lands.

[2:14:02 PM](#)

REPRESENTATIVE EASTMAN asked how this bill assists in the clean up of contaminated lands because it absolves liability, at least in some situations, from corporations. He noted that he was unsure how that would help the owners of the land to cleaning up the contaminations, and asked that, if anything, doesn't it make it so the Alaska Native Corporations do not have to clean it up because the contamination is not their fault.

MS. BISSETT responded that because the Alaska Native Corporations are potentially responsible parties, they are unable to apply for, for EPA ground fill development grants, for example, which is one of the reasons for this legislation. This bill lifts the liability problem in order to receive access to federal funds for cleanup, she advised.

[2:15:17 PM](#)

CHAIR CLAMAN opened public on HB 367. After ascertaining that no one wished to testify, closed public testimony on HB 367.

[HB 367 was held over.]

[2:15:55 PM](#)

The committee took an at-ease from 2:15 p.m. to 2:50 p.m.

HB 75-GUN VIOLENCE PROTECTIVE ORDERS

[2:50:58 PM](#)

CHAIR CLAMAN announced that the House Judiciary Standing Committee would return to discussions regarding 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 noted that Representative LeDoux had requested that a representative from the Department of Law (DOL) answer questions related to someone posting on Facebook that they are angry and wants to cause serious harm, and then goes to a school and shoots some folks, wherein for purposes of this question,

there was no basis for a Title 47 hold. In that regard, he asked Kaci Schroeder, DOL, to come forward and explain the options the police or the state troopers would have, and what crimes they might be able to arrest someone for in that setting.

[2:51:55 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, responded that there are several statutes the DOL can look at when dealing with someone making threatening types of statements, as follows: assault, wherein someone makes, by words or other conduct, threatens someone and they are potentially in fear of an assault, which is assault in the fourth degree; and harassment in the second degree is probably most applicable to the above-hypothetical circumstances offered wherein someone posts something on line about perhaps shooting up a school or causing other damage. Recently, she advised, the DOL prosecuted someone for posting on another person's Facebook page, "You are going to get assassinated." She explained that the person was prosecuted under the harassment in the second-degree statute.

[2:53:05 PM](#)

REPRESENTATIVE LEDOUX clarified that she was discussing a more generalized post that did not list the school, and instead posted that they were mad at the world and were going to blow up some people.

MS. SCHROEDER answered that the DOL would look at that type of posting on a sliding scale type of analysis. The more generalized the statement, the harder it would be for the DOL to prosecute as a crime. The more specific it is and the more imminent it reads to be, the better chance there is of prosecuting it as a crime.

[2:53:50 PM](#)

REPRESENTATIVE LEDOUX surmised that under her scenario, the DOL "would not do anything."

MS. SCHROEDER described Representative LeDoux scenario as "very general," and that is not to say the DOL would not do anything. The department may use that scenario as a reason to begin an investigation into the person to determine whether the person plans to take steps in furtherance of their statement. In the event the discussion is about a student in a school situation,

the schools can also take steps, such as suspension and so forth, that are short of criminal actions, she explained. A wide range of steps can be taken, short of criminal action, when someone is making threatening statements, she offered.

[2:54:36 PM](#)

REPRESENTATIVE LEDOUX stressed that her previous comment was not meant as a criticism. Representative LeDoux explained that she was trying to determine whether this bill was necessary, or whether, under current law, when someone is angry and threatens to "go and murder ten people," they can be arrested and their weapons removed.

MS. SCHROEDER responded that based on that statement alone and nothing else took place, it would be difficult to prosecute.

[2:55:19 PM](#)

REPRESENTATIVE EASTMAN noted that under this bill, weapons can be seized, and asked what the process would be if the owner of the weapons dies while those weapons are held by law enforcement.

MS. SCHROEDER answered that she could not answer the question because she has not thought through to the death of someone, which gets into disposal of property.

CHAIR CLAMAN commented that it sounds like an estate matter.

[2:56:21 PM](#)

CHAIR CLAMAN remarked that he became familiar with the terroristic threatening statutes in the early 1990s while involved in a criminal case wherein someone was charged for the direct threat of words or conduct. Subsequent to his citing the terroristic threatening statutes to the committee today and a conversation with Ms. Schroeder regarding the current version of the terroristic threatening statutes, he said that he realized the defendant, while speaking to another person on the telephone and clicking their pen next to the telephone to replicate a gun being opened and closed, would not be charged today under the terroristic threatening statutes.

[HB 75 was held over.]

[2:59:40 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:59 p.m.