

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 18, 2019

1:32 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Louise Stutes
Representative Adam Wool
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 12

"An Act relating to protective orders."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 12

SHORT TITLE: PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) KOPP

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|----------|-----|-------------------------------------|
| 02/20/19 | (H) | PREFILE RELEASED 1/7/19 |
| 02/20/19 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/20/19 | (H) | STA, JUD |
| 02/28/19 | (H) | STA AT 3:00 PM GRUENBERG 120 |
| 02/28/19 | (H) | Heard & Held |
| 02/28/19 | (H) | MINUTE(STA) |
| 03/07/19 | (H) | STA AT 3:00 PM GRUENBERG 120 |
| 03/07/19 | (H) | Moved CSHB 12(STA) Out of Committee |
| 03/07/19 | (H) | MINUTE(STA) |

03/08/19 (H) STA RPT CS(STA) 7DP
03/08/19 (H) DP: VANCE, LEDOUX, WOOL, SHAW, STORY,
FIELDS, KREISS-TOMKINS
03/18/19 (H) JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

KEN TRUITT, Staff
Representative Chuck Kopp
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a sectional analysis of HB 12 on behalf of Representative Kopp, the prime sponsor.

NANCY MEADE, General Counsel
Alaska Court System
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 12.

MAGGIE HUMM, Supervising Attorney
Alaska Legal Services Corporation
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 12.

KATY SODEN, Senior Staff Attorney
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 12.

TERYN BIRD, Attorney
Interior Alaska Center for Non Violent Living (IACNVL)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 12.

ROBIN MITCHELL
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 12.

STACY WALKER
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 12.

ALLEN M. BAILEY
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 12.

CARMEN LOWRY, Executive Director
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 12.

ACTION NARRATIVE

[1:32:02 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:32 p.m. Representatives Kopp, Shaw, Stutes, LeDoux, Eastman, Wool, and Claman were present at the call to order.

HB 12-PROTECTIVE ORDERS

[1:32:45 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 12 "An Act relating to protective orders."

[1:33:15 PM](#)

REPRESENTATIVE KOPP, introducing HB 12 as prime sponsor, stated that it relates to protective orders and addresses the 2018 Alaska Supreme Court ruling in Whalen v. Whalen. He said the court found in Whalen v. Whalen that it was unable to grant an extension or a renewal of a domestic violence protective order because the law was unclear regarding whether or not someone had to be a victim again of domestic violence after the reason for the initial order had already been adjudicated. He expressed concern for victims of assault whose protective orders expire around the time their abusers are released from jail. He noted that it is common for abusers to threaten to retaliate against victims prior to incarceration. He said this, in addition to

the initial assault, is a very real reason for a victim to be fearful of his/her abuser. He stated that HB 12 would make it clear that a person does not have to be a victim a second time to get a protective order extended or renewed.

[1:35:07 PM](#)

KEN TRUITT, Staff, Representative Chuck Kopp, Alaska State Legislature, said HB 12 is very simple. He addressed section 1, which he said deliberately and carefully amends AS 18.65.850, which relates to sexual assault and stalking protective orders, to add the concept of stalking to language detailing court prohibitions. He said the operative fix to the problem identified in Whalen v. Whalen can be found in [section 1, lines 7-8]. He said this, in conjunction with the language "or extended under this section" in section 2, would create a statutory fix deemed necessary by the Alaska Supreme Court in the Whalen decision. He pointed to new language found in lines 9 and 10 on page 1 and stated that, without this language, the "Whalen problem" would extend to the circumstances described in paragraph 3.

MR. TRUITT addressed section 2, which he said represents "the process and the procedure by which the petitioner and the respondent can respond." He said this would still be within the court's discretion. He added that nothing in HB 12 would address the burden of proof that the petitioner must meet either in the original petition for the protective order or in the request for an extension.

[1:38:05 PM](#)

REPRESENTATIVE KOPP noted that the Alaska Court System has recommended adding some clarifying language to lines 9 and 10 on page 1 so that it reads, "(3) a court previously found that the petitioner was a victim of stalking or sexual assault but declined to order relief under this section, and the petitioner alleges a change in circumstance since the court's previous ruling." He said this edit refers to an instance where something has changed since the court last heard a case that

would cause it to reevaluate the decision. He stated that he agrees with the court system's recommendation.

CHAIR CLAMAN said there will be an opportunity to amend HB 12.

[1:39:52 PM](#)

MR. TRUITT addressed sections 3 and 4, which he said operate similarly to sections 1 and 2 except they apply to the domestic violence protective order statute, which is constructed differently from the sexual assault and stalking protective order statute. He specified an example in line 18 under section 4, which features language that would limit the extension option only to the protective orders issued under AS 18.66.100(b)(2). He explained that AS 18.66.100(b)(1) covers protective orders of indeterminate length that can only be lifted by the court taking an additional action.

[1:41:09 PM](#)

REPRESENTATIVE KOPP explained that the protective orders referenced in AS 18.66.100(b)(1) would be exempted because the court would never lift those orders. He said the protective orders in AS 18.66.100(b)(2) have time limits that are more prescriptive.

[1:41:58 PM](#)

REPRESENTATIVE EASTMAN asked if anything in HB 12 would limit the court's ability to determine the length of a protective order.

REPRESENTATIVE KOPP answered "no." He distinguished between six-month protective orders for victims of domestic violence and one-year protective orders for victims of stalking and sexual assault. He noted that the language in HB 12 carefully follows current statutory language. He said HB 12 would identify reasons that, by themselves, would not disqualify a person from obtaining an extension. He added that this responds to concerns voiced by the Alaska Supreme Court in Whalen v. Whalen.

[1:43:56 PM](#)

REPRESENTATIVE EASTMAN asked how extensions were handled prior to the Whalen ruling. He asked what has changed.

REPRESENTATIVE KOPP explained that the petitioner in Whalen v. Whalen had a protective order which had expired and wanted it renewed because she was still afraid of [her ex-husband]. He said the Alaska Supreme Court decided it was unclear whether there was legislative intent to issue another order unless another act of domestic violence, sexual assault, or stalking was committed against her. He explained that this is problematic because victims are often still in fear of their abuser when that person gets out of jail, returns to the state, or otherwise regains access to the victim. He said the intent of HB 12 is to enable the court system to renew or extend an order within 30 days of expiration or 60 days after expiration, without the victim having to be revictimized. He said this would provide more protection to victims.

[1:45:30 PM](#)

REPRESENTATIVE EASTMAN asked how these types of situations were handled previous to the Whalen ruling. He asked if the ambiguities in the law were previously overlooked or ignored.

REPRESENTATIVE KOPP said the courts decided based on how they read the law. He said the Whalen decision was the result of an appeal based on an argument of how the law should be read. He said the fix offered in HB 12 would make things clearer going forward.

[1:46:20 PM](#)

REPRESENTATIVE STUTES asked Mr. Truitt to repeat the clarifying language recommended by the court system to be added to line 10 on page 1.

MR. TRUITT read, "a court previously found that the petitioner was a victim of stalking or sexual assault but declined to order relief under this section." He said the clarifying language

would be added so that the next words would be "and the petition alleges a change in circumstance since the court's previous finding."

[1:47:23 PM](#)

REPRESENTATIVE STUTES asked Mr. Truitt to explain section 5.

MR. TRUITT apologized for not addressing section 5 during his initial walkthrough of the bill. He said section 5 is prospective looking forward and also covers every order that has been issued. He clarified that every current protective order at the time HB 12 becomes law would be affected.

[1:48:32 PM](#)

REPRESENTATIVE STUTES asked if that means section 5 would establish a retroactivity for any previously issued protective orders.

REPRESENTATIVE KOPP answered "yes, any protective order that is current."

[1:48:59 PM](#)

REPRESENTATIVE EASTMAN asked how HB 12 would affect a person who was previously denied an extension or renewal for one of the reasons included in the bill. He asked if the intent of HB 12 is to allow those previously denied to "start with a fresh slate."

REPRESENTATIVE KOPP said that because a person has applied and been denied would not prohibit him/her from reapplying. He spoke to the importance of the to-be-added clarifying language for line 10 on page 1 that would reinforce this. He said HB 12 would not stop people from returning to the court to ask again for an extension or renewal.

[1:50:43 PM](#)

REPRESENTATIVE EASTMAN established a hypothetical scenario in which a court denies a request because it determines the timing of the filing "had something to do with the intent for which it was filed." He said perhaps the person making the request was found to be abusing the process in an attempt to sabotage a former spouse's professional ambitions. He asked how HB 12 would affect that sort of scenario.

REPRESENTATIVE KOPP said the court can decide that a protective order request is meritless on its face. He said HB 12 would not change that at all.

[1:51:50 PM](#)

REPRESENTATIVE LEDOUX asked for an example in which the court might find that the petitioner was the victim of stalking or sexual assault but decline to order relief. She asked if this is what HB 12 would address.

REPRESENTATIVE KOPP said those situations come up less frequently. He gave an example in which a protective order matter happens simultaneously with a family law matter like a child custody dispute. He said the court could find that domestic violence occurred but determine that it was related to the custody issue. He said that, in this case, the court might make a ruling on the family law matter but not on the protective order matter. He offered another example in which both members of a couple are petitioners. In this example, a wife has a petition for domestic violence that is in effect against her husband. The husband then asks for a protective order against his wife suggesting she attacked him. The court could decide that the attack happened but deny a protective order because the husband is about to leave the country for six months for work. Representative Kopp said there many possible situations where a judge could find that something had happened yet not award a protective order.

REPRESENTATIVE LEDOUX requested additional details from the court system.

[1:54:47 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, addressed Representative LeDoux's question pertaining to why the court, having found that domestic violence occurred, would not grant a petition for a protective order. She said there are two things the court must find to issue a protective order: that the petitioner was the victim of a crime of domestic violence and that the protective order is necessary to protect the person from future harm. She said a common example in which the court might find a protective order to be unnecessary is if the respondent lives out of state and the court cannot find that there is a threat of the petitioner's future harm.

REPRESENTATIVE LEDOUX asked about the likelihood a protective order would not be issued because the respondent is going to prison.

MS. MEADE said that would be another reason why a protective order could be found unnecessary.

[1:56:11 PM](#)

CHAIR CLAMAN opened public testimony on HB 12.

[1:57:00 PM](#)

MAGGIE HUMM, Supervising Attorney, Alaska Legal Services Corporation, also addressed Representative LeDoux's question pertaining to why the court, having found that domestic violence occurred, would not grant the petition for a protective order. She said most of the common scenarios have already been mentioned. She emphasized that the court has discretion whether to issue a protective order even if it finds that an act of domestic violence has occurred. She said an amended HB 12 would allow the court to reconsider extending a protective order in the event of a change in circumstance.

[1:59:13 PM](#)

KATY SODEN, Senior Staff Attorney, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), stated that ANDVSA

supports HB 12. She said domestic violence, sexual assault, and stalking are often a part of a "cycle of behavior" that can go on for years and escalate over time. Because of this, she argued, survivors often need protection from abuse for more than 6 or 12 months, which is all currently available to them following Whalen v. Whalen. She said ANDVSA supports HB 12 because it would give discretion to the courts to determine if a survivor still needs safety after 6 or 12 months.

MS. SODEN discussed a client whose protective orders have expired but is still fearful of a former abuser who has returned to the state after three years. She said the former abuser knows where her client lives, and that the client believes to have seen him near her house. Ms. Soden stated that her client is unable to obtain a new protective order because no new crime has been committed.

MS. SODEN discussed a different client who had a long-term domestic violence protective order against her ex-husband. She detailed some of the ex-husband's aggressive and violent acts and behaviors. She said the ex-husband did not violate the protective order while it was active but has since contacted and threatened her client. Ms. Soden said her client desperately wants a new protective order but cannot obtain one as it is not clear that her ex-husband has committed a new crime of domestic violence.

MS. SODEN said the current law does not protect women like these until they are revictimized. She opined that this is not how the protective order statutes should work. She said ending domestic violence and sexual assault requires strong and flexible civil protective orders.

[2:03:08 PM](#)

TERYN BIRD, Attorney, Interior Alaska Center for Non Violent Living (IACNVL), said she represents victims of domestic violence, sexual assault, and stalking in protective order and family law matters. She stated her support for HB 12 on behalf of IACNVL and "countless victims." She said the Whalen decision has had a devastating effect on men, women, and children in the

Interior seeking protection from potentially lethal perpetrators of domestic violence. She added that she is aware of over 50 victims impacted by the Whalen decision. She said the Whalen decision leaves victims of egregious crimes without protection unless they have been revictimized in a way that is recognized as a crime. She stated that protective orders prevent escalation and protect victims from further harm, serious injury, or death. She added that one year is not sufficient time for every perpetrator of domestic violence to either "cool down," move on, or rehabilitate.

MS. BIRD shared the story of one client who was abused in a variety of ways including repeatedly raped in front of her disabled children. She said the client obtained a one-year protective order against her husband upon their separation. According to Ms. Bird, it took the United States Army two years to criminally prosecute the husband, who served only one year in jail for his crimes. She said her client was not entitled to further protection when the husband left jail. She mentioned that the husband blamed her client for losing his career and child custody. She stressed the danger her client faced and reiterated that her client was unable to secure a new protective order because she had already had one. Ms. Bird asked the committee members to think about people like her client as they weigh their decisions on HB 12.

[2:06:10 PM](#)

ROBIN MITCHELL testified in opposition to HB 12. She said HB 12 offers no protection for the falsely-accused. She explained that she had two domestic violence restraining orders issued against her despite the judge finding no domestic violence had occurred. She stated she is disabled, and that the protective orders made her homeless. She said she was denied medical and dental care. She relayed that she has had six surgeries in three weeks and is on daily intravenous drugs. She gave additional details about the status of her case. She said the Alaska Court System's website does not offer a Petition Wizard feature for the falsely-accused victims of protective orders. She said there is no victim advocate for people like her. She noted that she cannot find a single case in which a person was

prosecuted for obtaining a protective order based on false accusations. She levied a series of accusations against various people. She listed additional details about her case. She said she would send a detailed e-mail to the entire legislature.

[2:08:59 PM](#)

STACY WALKER testified in support of HB 12. She explained that she is a lawyer who takes on pro bono cases through ANDVSA and identified herself as the attorney who handled the Whalen case at the trial level. She said previous to the Whalen decision judges had the discretion to consider the course of conduct that was the basis for the original protective order when deciding, based on new conduct, whether a client was still in need of protection. She described the Whalen case and shared examples of erratic conduct by Mr. Whalen. She restated that the court's interpretation of the law prevented Mrs. Whalen from acquiring a subsequent restraining order.

MS. WALKER shared a personal experience in which she received a call from the Alaska Psychiatric Institute about a man there who had intended to kill her and a client. She said the call revealed that the man had been stalking her and her client for three months. She said she was able to get a stalking protective order against him. She noted that, if he were to come around her house again, that would not be enough to justify a new protective order. She explained she would have to establish a new pattern of stalking not based on what had happened before. She said that, if she were still in fear of this man, there would be "nowhere for [her] to go."

[2:12:04 PM](#)

ALLEN M. BAILEY identified himself as a family lawyer and a former municipal prosecutor. He said he is a member of the American Bar Association (ABA) Commission on Domestic & Sexual Violence (CDSV), the former Chair of the ABA Section of Family Law Domestic Violence Committee, and the co-author of House Bill 385 [passed during the 23rd Alaska State Legislature] which related to awarding child custody.

MR. BAILEY said that, statistically, men are the vast majority of intimate partner violence perpetrators. He discussed various programs to rehabilitate abusive men. He noted that, despite those efforts, research suggests no statistically significant reduction in recidivism for men that batter. He noted that abusive women, who he said tend to suffer from mental illness, are also unlikely to change their behaviors.

MR. BAILEY argued that Whalen v. Whalen ignored what the Alaska Supreme Court had previously recognized, which is the high recidivism rate of people who abuse their partners. He cited Lana C. vs. Cameron P. from 2005 which he said made note of the high recidivism of batterers. He also cited State v. [indisc.] from 1992 in which the court referenced the higher likelihood of children being abused in the homes of people who have committed domestic violence.

MR. BAILEY said he supports HB 12 because neither the trauma of victims nor the behavior of abusers goes away after one year. He said the first two years after separation are the most dangerous time.

[2:15:18 PM](#)

CARMEN LOWRY, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), said ANDVSA supports HB 12. She noted that domestic violence protective orders are for 12 months while sexual assault and stalking protective orders are for 6 months. She suggested an amendment that would make both protective orders for 12 months.

[2:16:44 PM](#)

CHAIR CLAMAN, after ascertaining no one else wished to testify, closed public testimony on HB 12.

[2:17:15 PM](#)

REPRESENTATIVE EASTMAN asked if any part of HB 12 would trigger the court automatically reopening requests that had been previously denied.

MS. MEADE answered that nothing in the bill would require opening non-current or expired protective orders. She said a person could come and petition for that.

[2:18:00 PM](#)

REPRESENTATIVE EASTMAN asked what impact HB 12 would have on short-term, ex parte protective orders.

MS. MEADE said, by her reading, HB 12 would not affect short-term orders. She explained that the statutes to be amended refer only to long-term domestic violence protective orders and long-term sexual assault and stalking protective orders.

[2:18:37 PM](#)

REPRESENTATIVE EASTMAN asked about the current justification necessary for someone to receive a protective order. He asked for confirmation that HB 12 would not change those criteria.

MS. MEADE said the standards for granting a protective order would not be changed. She explained that to receive a protective order for domestic violence, the court must find that the petition establishes probable cause that a crime of domestic violence has occurred, and it is necessary to protect the petitioner from domestic violence in the future.

[2:20:17 PM](#)

REPRESENTATIVE LEDOUX asked Representative Kopp for his thoughts on Ms. Lowry's comments.

REPRESENTATIVE KOPP said changing the length of sexual assault and stalking protective orders is a policy call. He said sexual assault and stalking protective orders are more recent than domestic violence protective orders, which have been current since the 1970s. He said he did not know the full history behind the legislature's decision to make them for six months. He said he did not know what implications could be incurred by changing the length. He called it a fair question.

REPRESENTATIVE LEDOUX asked Representative Kopp if he thinks it is a good idea to amend HB 12 to extend the length of sexual assault and stalking protective orders.

REPRESENTATIVE KOPP said he is conflicted. He said he wants to protect people as long as possible, but he also wants to avoid violating liberty. He said he wants to read the legislative history to understand why the legislature settled on six months. He said he would report back at the next hearing.

REPRESENTATIVE LEDOUX thanked him.

CHAIR CLAMAN posited that there must have been a reason for the orders to be only six months.

[2:22:30 PM](#)

REPRESENTATIVE EASTMAN asked if victims receive adequate notification prior to their abuser being released from custody so that they have the opportunity to petition for a new protective order or for an extension to an existing one.

CHAIR CLAMAN noted that recent reform measures passed by the legislature increased the notice rights of victims of crime. He said the Department of Corrections (DOC) is obligated to inform victims.

MS. MEADE said that victims of any crime can sign up with DOC through its [Victim Information and Notification Everyday] (VINE) program. She explained that victims can learn when their offenders are to have a change in status including release from prison. She added that the probation conditions of a domestic violence sentence would include a no contact order enforced by a probation officer.

[2:25:06 PM](#)

REPRESENTATIVE EASTMAN asked what the time period is for VINE notifications.

MS. MEADE said she is unable to answer that, noting it is a Department of Corrections program.

[2:25:38 PM](#)

CHAIR CLAMAN announced that HB 12 would be held for further review.

[2:26:18 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:26 p.m.