

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 28, 2019

3:00 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Jonathan Kreiss-Tomkins, Co-Chair
Representative Gabrielle LeDoux
Representative Andi Story
Representative Adam Wool
Representative Laddie Shaw

MEMBERS ABSENT

Representative Sarah Vance

COMMITTEE CALENDAR

HOUSE BILL NO. 34

"An Act naming the Scott Johnson Memorial Bridge."

- HEARD & HELD

HOUSE BILL NO. 12

"An Act relating to protective orders."

- HEARD & HELD

HOUSE BILL NO. 14

"An Act relating to assault in the first degree; relating to sex offenses; relating to the definition of 'dangerous instrument'; and providing for an aggravating factor at sentencing for strangulation that results in unconsciousness."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 34

SHORT TITLE: NAMING SCOTT JOHNSON MEMORIAL BRIDGE

SPONSOR(S): REPRESENTATIVE(S) TALERICO

02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	STA, TRA
02/28/19	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 12

SHORT TITLE: PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) KOPP

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

BILL: HB 14

SHORT TITLE: ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

SPONSOR(S): REPRESENTATIVE(S) LINCOLN

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

WITNESS REGISTER

REPRESENTATIVE DAVID TALERICO

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 34, as prime sponsor.

BRANDY JOHNSON

Fairbanks, Alaska

POSITION STATEMENT: Testified in during the hearing of HB 34.

REPRESENTATIVE CHUCK KOPP

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 12, Version S, as prime sponsor.

KEN TRUIT, Staff

Representative Chuck Kopp

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided the sectional analysis for HB 12, Version S, on behalf of Representative Kopp, prime sponsor.

NANCY MEADE, General Counsel

Office of the Administrative Director

Alaska Court System

Anchorage, Alaska

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

REPRESENTATIVE JOHN LINCOLN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 14, Version E, as prime sponsor.

ROSE FOLEY, Staff
Representative John Lincoln
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 14, Version E, on behalf of Representative Lincoln, prime sponsor.

ACTION NARRATIVE

[3:00:20 PM](#)

CO-CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:00 p.m. Representatives Fields, Story, Wool, Shaw, and Kreiss-Tomkins were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 34-NAMING SCOTT JOHNSON MEMORIAL BRIDGE

[3:01:53 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 34, "An Act naming the Scott Johnson Memorial Bridge."

[3:02:05 PM](#)

REPRESENTATIVE DAVID TALERICO, Alaska State Legislature, as prime sponsor of HB 34, paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

The legislation amends Alaska Statute 35.40 by naming bridge number 506 over the Tok River at mile 1309 of the Alaska Highway to be named the Scott Johnson Memorial Bridge.

Scott was a person who led from the front. He set very high standards for himself. After graduating his

recruit class as valedictorian, he was assigned to Fairbanks patrol. Scott became involved with the Special Emergency Response Team (S.E.R.T.) for 19 years and held positions of perimeter team leader, entry team leader and acting team leader. He was a K-9 handler, instructor and coordinator. In addition, Scott trained at least 33 dual purpose and/or drug detection canine teams throughout Alaska. He also worked in the Alaska Bureau of Investigation and at the age of 36 was promoted to sergeant. Scott oversaw patrol shift and later transferred to the Alaska Bureau of Alcohol and Drug Enforcement. Scott earned at least 43 letters of commendation, including two commendations for honorable service during his career.

Scott Johnson was an Alaska State Trooper killed in the line of duty on May 1, 2014. He had served the State of Alaska 23 years.

Let this be a lasting memorial to a man who gave his life in the line of duty to the citizens of the State of Alaska.

REPRESENTATIVE TALERICO directed the committee's attention to a document by Brandy Johnson [surviving spouse to Scott Johnson], entitled "Scott Johnson Memorial Scholarship January 12, 1969 - May 1, 2014," included in the committee packet. He added that Brandy Johnson would support [the naming of the bridge through legislation], if there is public support for doing so; he urges public testimony [on HB 34] to be taken to determine whether public support exists to move forward with the naming of the bridge; if the public support is not there, he will abide by Ms. Johnson's wishes.

[3:05:23 PM](#)

BRANDY JOHNSON, surviving spouse to Scott Johnson, read from her written testimony as follows [original punctuation provided]:

Chairpersons and members of the committee,

After much self thought, I have found I must think about policy change beyond myself and what change brings to others.

I realize there is not an inadequacy in policy to address here today. I like the fact that the Tok

River Bridge is named what it is. The bridge has held that name for many years. Scott and I have floated the river from dawn till dusk hunting moose from the Glenn Highway to the Alcan Highway ending at the Tok River Bridge. In that same segment of the Tok River, Scott told me stories of camping with his family as a young boy. He and I crossed the bridge twice yearly traveling to and from Eagle, Alaska during hunting season for at least eighteen years prior to him being murdered.

We must remember, policies that are clearly understood and supported by all factions of a community are respected and formulated in a constructive way. I'd appreciate hearing supportive testimony from the communities that centralize the area of the Tok River Bridge. Testimony from just family, friends and co-workers limits the space for community participation and tailors the policy to a few individuals. Through public deliberation across all factions, community members will voice their respect for change or no change. Not everybody likes change. Change shouldn't be based on tradition, personal or political gain of groups or individuals. Allowing and encouraging such involvement can be realized in a way that allows community representatives to become more active members in the policymaking process.

After Scott was murdered, I was asked if I was interested in naming a bridge after Scott and Gabe Rich. I was not, based on the location of the bridge. I don't want to drive past a sign with Scott's name and see that it has been shot up with bullets and spray painted. The disrespect and hurt is terrible. What is going through my child's mind when they see this kind of vandalism? As much as I appreciate the thoughtfulness of the honor, none of these honors take away the pain and loss. If anything, they make it worse for me. This is where I must look beyond myself for others. Scott's job was that of a public servant and now I have found that his death, for many, will always be remembered by his job and not the person he was.

In conclusion, I support the renaming of the Tok River Bridge to the Scott Johnson Memorial Bridge if there is broadspread community support of the centralized

area of the bridge. How our lawmakers measure that support I will leave to them.

[3:08:19 PM](#)

REPRESENTATIVE STORY commented that she was honored to learn of Scott Johnson's life and work. She offered that she appreciated Ms. Johnson's desire for public testimony.

[3:08:57 PM](#)

REPRESENTATIVE SHAW commented that honoring a person with a memorial road sign is heartfelt and meaningful. It affords one the opportunity to take a moment and remember a valuable life.

CO-CHAIR KREISS-TOMKINS stated that HB 34 would be held over.

HB 12-PROTECTIVE ORDERS

[3:10:32 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 12, "An Act relating to protective orders."

[3:11:02 PM](#)

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, prime sponsor of HB 12, paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

Last summer, the Alaska Supreme Court ruled in Whalen v. Whalen that victims of domestic violence are unable to get an extension or renewal for an existing protective order based on the same incident of violence of the original order. This is regardless of whether they are still in fear of their perpetrators or whether their perpetrators continue to pose a risk to their safety.

The Court's holding turned on the interpretation of the protective order statutes which fail to expressly allow for extensions, renewals, or subsequent protective orders. The Court ruled the statutes are unclear and thus, do not allow for the extensions.

The purpose of House Bill 12 is to clearly articulate that victims may request an extension of a protective order 30 days before or within 60 days after it expires.

The bill also extends this clarification to the statute that covers protective orders for sexual assault and stalking.

HB 12 clarifies that a court is not barred from ordering relief to victims based on an incident for which relief has previously been issued or considered, thus preventing a situation in which survivors must be a victim again before receiving judicial assistance.

REPRESENTATIVE KOPP summarized by saying the proposed legislation would amend two areas of law that address domestic violence protective orders and sexual assault stalking protective orders to make it very clear that renewals may happen without revictimization; protective orders may be renewed based on one's continuing fear of domestic violence, sexual assault, or stalking, as long as a court finds the continuing fear to be reasonable. He added that under HB 12, the accused would not be denied due process, would still be advised of a hearing 10 days in advance; and would be given the opportunity to testify.

[3:15:25 PM](#)

CO-CHAIR FIELDS moved adopt the committee substitute (CS) for HB 12 [Version 31-LS0103\S, Radford, 1/24/19] as a work draft. There being no objection, Version S was before the committee.

[3:15:55 PM](#)

KEN TRUIT, Staff, Representative Chuck Kopp, Alaska State Legislature, on behalf of Representative Kopp, prime sponsor of HB 12, referred the committee's attention to Section 1 of Version S [page 1, lines 3-10] and relayed that under the proposed legislation, AS 18.65.850(e) would be split into three separate sections. The proposed new paragraph (1), [lines 5-6], prepares the existing statute for a list that follows. The proposed new [paragraph] (2), [lines 7-8], is the operative fix to the problem stated in the Whalen v. Whalen Alaska Supreme Court case [of 2018, "Whalen"]; the new language would instruct the court that it may not deny a petition for a protective order solely because the act that gave rise to the initial protective order is the same one for which the extension is petitioned. He

said that the new paragraph (3), [lines 9-10], is a proposed policy for protective orders. It states that a court may not deny issuing a protective order solely because the court had previously found that the petitioner was a victim of stalking or sexual assault but declined to order relief under [Section 1].

MR. TRUIT related that HB 12 is very narrowly focused to fix the Whalen issue and to propose a new policy for protective orders; everything else in the proposed legislation maintains the protective order policy as "everybody thought it was" before the Whalen decision.

MR. TRUIT continued by say that Section 2 of Version S explains how HB 12 would be implemented in practice and provides the process. He directed attention to subsection (f) on page 1, starting on line 12, which states in part, "Within 30 days before, or within 60 days after, the expiration of a protective order issued or extended under this section ..." and said that this language instructs that the extensions are not limited to just one. He relayed that the remainder of Section 2 addresses the notice to the respondent; the judge still exercises the discretion [for issuing the order]; nothing in the proposed legislation alters the preponderance of evidence standard, already in statute, required for the petitioner to convince the judge and the court to issue the order; and the court would still be required to make a determination based on what is submitted by the petitioner.

[3:20:13 PM](#)

MR. TRUIT relayed that Sections 3 and 4 represent provisions identical to Section 1 and 2 but address the domestic violence protective order statute.

MR. TRUIT said that Section 5 is the applicability clause to make it clear that should HB 12 become law, it would affect existing domestic violence orders, orders issued on the effective date of the law, and any orders thereafter.

[3:20:46 PM](#)

REPRESENTATIVE LEDOUX asked why the orders are not issued for a reasonable lengthy time as a regular course of action in the criminal proceedings. She expressed her belief that even though the protective orders may involve criminal action by the respondent, the orders are within the civil jurisdiction of the court. She asked why the court doesn't issue the protective

orders in the event someone has been incarcerated for domestic violence, sexual assault, or stalking.

REPRESENTATIVE KOPP explained that there are ex parte protective orders, which are 20-day orders issued without the presence of the defender; and there is an emergency 72-hour order that a police officer can request to allow collection of evidence for a hearing. He maintained that what is under discussion in the proposed legislation is the long-term protective orders, which have been in state statute for about 40 years. It is unclear how the length of time for a protective order - six months or one year - was determined; these time periods are fairly standard from state to state. He mentioned that the court issues protective orders; the court determines probable cause for restraining someone; and there is due process for the petitioner and the respondent to make their cases regarding the long-term orders.

[3:23:30 PM](#)

REPRESENTATIVE LEDOUX asked whether the situation discussed involves someone accusing another of sexual assault but has not made a report with police.

REPRESENTATIVE KOPP offered that someone from the Alaska Court System (ACS) should answer the question definitively; however, he expressed his belief that it would be profoundly unusual for a court to issue a sexual assault protective order unless there was a formal [police] report.

[3:24:21 PM](#)

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, responded that protective orders for sexual assaults are relatively rare compared with domestic violence protective orders. She confirmed that these proceedings are completely civil proceedings. There must be a household relationship between the two individuals; they have a dispute; they go to court. She said that there is no district attorney involved; it is citizen versus citizen. The proceedings are civil proceedings; if the court finds by a preponderance of evidence that there was a crime of domestic violence and the order is necessary, the court will issue it.

MS. MEADE restated the question: If there is a finding by a court of a crime of domestic violence, where does the criminal law come into it? She said that the petitioner in that scenario

can report the incident to the police, but he/she does not usually do that. There are far more citizens seeking domestic violence protective orders than criminal cases against someone for the crime of domestic violence. There are about eight different crimes of domestic violence, including trespassing and vandalism. She confirmed Representative Kopp's assessment that it would be quite unusual for the court to issue a sexual assault protective order, because it would be making a finding that there was a crime of sexual assault, which is a distinct thing, as opposed to domestic violence, which can be one of many things. She mentioned that in most sexual assault cases, there is a corresponding criminal case.

REPRESENTATIVE LEDOUX asked whether in the situation where there is a corresponding criminal case for the sexual assault, a separate protective order is issued in conjunction with the criminal case.

MS. MEADE responded that the court wouldn't decide to issue an order on its own, but "no contact with the victim" is very often a bail condition of the person released. When the person is in jail, no protective order is needed; after release, the court can issue a protective order during probation.

[3:27:54 PM](#)

REPRESENTATIVE WOOL stated his understanding that there was a historical basis for the discrepancy between six months and one year; and the protective orders could be successively extended or renewed pending approval of a judge.

MS. MEADE responded that his understanding was correct as far as the intent of the wording of HB 12. She further explained that the six months and one-year time frames were based on federal standards and were consistent across states. She stated, "There's that balance of limiting in many ways the liberty of the respondent in these cases for longer than is necessary, and in most, if not all, cases the petitioner's fear is abated after six months or a year, and as Representative Kopp is saying, if not, they can come back."

REPRESENTATIVE WOOL asked whether there was a historical reason for domestic violence incurring a one-year protective order and sexual assault incurring a six-month protective order.

MS. MEADE expressed her belief that the length of time of the protective order was changed in 2004. It used to be a six-month

time period for domestic violence protective orders and resulting from a federal Act - possibly the Violence Against Women Act (VAWA) of 1994 - states generally moved to one-year protective orders and Alaska followed in 2004.

[3:29:44 PM](#)

REPRESENTATIVE STORY referred to Section 1 on page 1, lines 5-6, of Version S, which discusses the lapse of time between an act of sexual assault and the filing [of the petition]. She asked whether "stalking" should be added to the language in the paragraph.

REPRESENTATIVE KOPP replied that stalking is different [from sexual assault] because it refers to a course of conduct occurring over time; it is not one event, but many individual events that, collectively, put a person in fear. He added that the legal definition refers to a process over time which, in summation, constitutes stalking. That stalking is not "specific event" oriented, but "course of conduct oriented" explains the language of the proposed legislation. He offered that Legislative Legal Services could provide additional information.

REPRESENTATIVE STORY mentioned that she could imagine a situation in which stalking is resumed after a lapse in time.

MR. TRUIT responded that the language cited is from existing statute; Version S does not propose any alterations to existing language but adds language.

REPRESENTATIVE STORY maintained that there is no stalking language included on line 5.

REPRESENTATIVE KOPP answered that he is fully supportive of making the proposed legislation as inclusive as possible. In discussion with Legislative Legal Services there was a drafting issue with adding "stalking" because of the event-specific nature of a crime of assault versus stalking, which is defined in law as a course of conduct over time. He maintained that although his focus was to address the Whalen decision, he is empathetic to Representative Story's concern.

[HB 12 was held over.]

HB 14-ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

[3:33:48 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 14, "An Act relating to assault in the first degree; relating to sex offenses; relating to the definition of 'dangerous instrument'; and providing for an aggravating factor at sentencing for strangulation that results in unconsciousness."

[3:34:17 PM](#)

REPRESENTATIVE JOHN LINCOLN, Alaska State Legislature, as prime sponsor of HB 14, paraphrased from the sponsor statement as follows [original punctuation provided]:

House Bill 14 (HB 14) classifies the act of ejaculating on a person without their consent as a sex crime and recognizes the serious nature of strangulation to the point of unconsciousness by classifying the act as first degree assault and including it in the list of aggravating factors for sentencing.

In the fall of 2018 a plea deal agreement illuminated the fact that ejaculating on a person without their consent could not be prosecuted as a sex offense in Alaska. This bill enhances sexual assault statutes by adding unwanted contact with ejaculate to the definitions of sexual assault in the third degree and sexual abuse of a minor in the third degree, depending on the age of the victim.

HB 14 also acknowledges the seriousness of strangulation. Strangulation is prevalent in domestic violence incidences, and 56% of women murdered in Alaska in 2017 were killed by an intimate partner. A study published by the Journal of Emergency Medicine found that a prior non-fatal strangulation increases a woman's likelihood of becoming a homicide victim by 700%, and non-fatal strangulation preceded 43% of domestic homicides. This bill recognizes the gravity of strangulation as a precursor to future violent crimes.

REPRESENTATIVE LINCOLN thanked the following: 49th Rising, No More Free Passes, the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), the Public Defender Agency (Department

of Administration (DOA)), Department of Law (DOL), Legislative Legal Services, and the co-sponsors of HB 14.

[3:36:36 PM](#)

CO-CHAIR FIELDS moved to adopt the committee substitute (CS) for HB 14 [Version 31-LS0182\E, Radford, 2/26/19]. There being no objection, Version E was before the committee.

[3:37:19 PM](#)

ROSE FOLEY, Staff, Representative John Lincoln, Alaska State Legislature, on behalf of Representative Lincoln, prime sponsor of HB 14, paraphrased from the sectional analysis for Version E as follows [original punctuation provided]:

Section 1: Amends AS 11.41.200(a), classifying strangulation to the point of unconsciousness as assault in the first degree.

Section 2: Amends AS 11.81.900(b)(15), clarifying that "dangerous instrument" with relation to strangulation includes hands or "other body parts".

Section 3: Amends AS 11.81.900(b)(60), to include in the definition of sexual contact "the defendant's knowingly causing the victim to come into contact with ejaculate".

Section 4: Amends AS 12.55.155(c), adding strangulation to the point of unconsciousness to the list of aggravating factors to be considered at sentencing.

Section 5: Establishes that the provisions are applicable only to crimes committed on or after the effective date of the legislation.

[HB 14 was held over.]

[3:39:07 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 3:39 p.m.