

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

February 23, 2023

3:31 p.m.

**MEMBERS PRESENT**

Senator Scott Kawasaki, Chair  
Senator Matt Claman, Vice Chair  
Senator Jesse Bjorkman  
Senator Bill Wielechowski  
Senator Kelly Merrick

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 28

"An Act relating to workplace violence protective orders; relating to the crime of violating a protective order; relating to the powers of district judges and magistrates; amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 32

"An Act prohibiting the use of chokeholds by peace officers; and relating to justification of use of force by peace officers."

- HEARD & HELD

SENATE BILL NO. 31

"An Act relating to the selection, retention, and rejection of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; and relating to the duties of the Commission on Judicial Conduct."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 28

SHORT TITLE: WORKPLACE VIOLENCE PROTECTIVE ORDERS  
SPONSOR(s): SENATOR(s) CLAMAN

01/18/23 (S) PREFILE RELEASED 1/9/23  
01/18/23 (S) READ THE FIRST TIME - REFERRALS  
01/18/23 (S) STA, JUD  
02/23/23 (S) STA AT 3:30 PM BELTZ 105 (TSBldg)

BILL: SB 32

SHORT TITLE: CHOKEHOLD BAN  
SPONSOR(s): SENATOR(s) GRAY-JACKSON

01/18/23 (S) PREFILE RELEASED 1/13/23  
01/18/23 (S) READ THE FIRST TIME - REFERRALS  
01/18/23 (S) STA, JUD  
02/23/23 (S) STA AT 3:30 PM BELTZ 105 (TSBldg)

BILL: SB 31

SHORT TITLE: SELECTION AND REVIEW OF JUDGES  
SPONSOR(s): SENATOR(s) SHOWER

01/18/23 (S) PREFILE RELEASED 1/13/23  
01/18/23 (S) READ THE FIRST TIME - REFERRALS  
01/18/23 (S) STA, JUD  
02/23/23 (S) STA AT 3:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

LIZZIE KUBITZ, Staff  
Senator Matt Claman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional analysis for SB 28 on behalf of the sponsor.

BRENDA STANFIELD, Executive Director  
Alaska Network on Domestic Violence and Sexual Assault  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 28.

SENATOR ELVI GRAY-JACKSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 32.

BESSE ODOM, Staff  
Senator Elvi Gray-Jackson

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional analysis for SB 32 on behalf of the sponsor.

MICHAEL PATTERSON, Founder  
Party for Socialism and Liberation  
Anchorage, Alaska

**POSITION STATEMENT:** Provided invited testimony in support of SB 32.

DANIEL CASNER, representing self  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 32.

CYNTHIA GACHUPIN, Member  
Party for Socialism and Liberation  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 32.

MORGAN LIM, Lobbyist  
Planned Parenthood Alliance Advocates  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 32.

AMANA MBISE, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 32.

JASMIN SMITH, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 32.

LIZ LYKE, representing self  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 32.

PHILLIP MOSER, representing self  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 32 with amendments.

CAPTAIN CORNELIUS SIMS, Commander  
Division of Alaska State Troopers  
Department of Public Safety  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during a hearing on SB 32.

JOSEPH GAMACHE, Executive Director  
Alaska Police Standards Council  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on SB 32.

MIKE SHOWER, District O  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 31.

BETTY JO MOORE, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 31.

LOREN LEMAN, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 31.

FRITZ PETTYJOHN, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 31.

#### **ACTION NARRATIVE**

[3:31:50 PM](#)

**CHAIR SCOTT KAWASAKI** called the Senate State Affairs Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Merrick, Claman, Wielechowski, Bjorkman, and Chair Kawasaki.

#### **SB 28-WORKPLACE VIOLENCE PROTECTIVE ORDERS**

[3:33:18 PM](#)

**CHAIR KAWASAKI** announced the consideration of SENATE BILL NO. 28 "An Act relating to workplace violence protective orders; relating to the crime of violating a protective order; relating to the powers of district judges and magistrates; amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration; and providing for an effective date."

[3:34:18 PM](#)

SENATOR MATT CLAMAN, District H, sponsor of SB 28, introduced the legislation paraphrasing the following sponsor statement:

When individuals make credible threats of violence against an employer's worksite or an employee, the attorney representing the employer may need to file a civil lawsuit and ask for a temporary restraining order to protect the business. It can take several days to complete and obtain the order. In contrast, people seeking a domestic violence restraining order can usually get the court order within one day.

Senate Bill 28, modeled after Alaska's domestic violence protective order process, allows an employer to file a petition for a protective order against an individual who the employer reasonably believes committed an act of violence against the employer or an employee, or made a threat of violence against the employer or an employee that can reasonably be construed as a threat that may be carried out at the employer's workplace.

The intent of Senate Bill 28 is to help prevent incidents such as the fatal shooting of a hospital employee by an ex-employee at the Soldotna Central Peninsula General Hospital in November 2008. Eight states have laws providing for the issuance of workplace restraining orders (WROs) and three states have the option for employers to file for the same type of orders that are available to victims. Several others are currently considering related legislation.

Senate Bill 28 gives employers a more effective way to protect their workplace and their employees from threats of violence.

[3:36:19 PM](#)

LIZZIE KUBITZ, Staff, Senator Matt Claman, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 28 on behalf of the sponsor.

**Section 1**

*AS 11.56.740. Violating a protective order.*

Amends AS 11.56.740(a) by adding a new subsection (4) to specify that a person commits the crime of violating a protective order if the person knowingly commits or attempts to commit an act that violates the

provisions listed under the workplace violence protective order statutes.

**Section 2**

*AS 11.56.740. Violating a protective order.*

Amends AS 11.56.740(c) by adding the workplace violence protective order statutes to the meaning of "protective order."

**Section 3**

*AS 18.65.530. Mandatory arrest for crimes involving domestic violence, violation of protective orders, and violation of conditions of release.*

Amends AS 18.65.530(a) by clarifying that the mandatory arrest statute for crimes involving domestic violence, violation of protective orders, and violation of conditions of release is subject to the requirements of sec. 1.

**Section 4**

*AS 18.65.540. Central registry of protective orders.*

Amends AS 18.65.540(a) to add the workplace violence protective order statutes to the central registry of protective orders maintained by the Department of Public Safety.

[3:37:37 PM](#)

**Section 5**

*AS 18.65.540. Central registry of protective orders.*

Amends AS 18.65.540(b) to add the workplace violence protective order statutes to the list of protective orders a peace officer enters into the central registry within 24 hours of receiving.

**Section 6**

Amends AS 18.65 to add new section: "Article 12A. Workplace Violence Protective Orders."

**Sec. 18.65.875. Protective orders; eligible petitioners; relief.**

Section (a) gives employers the ability to file a petition for a protective order against an individual who the employer reasonably believes: (1) committed an act of violence against the employer or an employee; or (2) made a threat of violence against the employer or an employee that can reasonably be construed as a

threat that may be carried out at the employer's workplace.

Section (b) specifies that the court shall schedule a hearing and provide at least 10 days' notice to the respondent.

Section (c) details prohibited behavior of the respondent after the protective order is issued.

Section (d) describes the court's responsibilities related to issuing a protective order.

Section (e) clarifies a court may not deny a petition for a protective order solely because of a lapse of time between an act of violence or a threat of violence and the filing of the petition.

**Sec. 18.65.877. Ex parte protective orders for workplace violence.**

Gives employers the ability to file a petition for an ex parte protective order—a temporary order that would grant immediate protection.

**Sec. 18.65.880. Modification of workplace violence protective order.**

Creates a process for either the petitioner or the respondent to request modification of a protective order.

**Sec. 18.65.885.**

Specific protective orders. Specifies that an invitation by the petitioner or a named designated employee of the petitioner to have the prohibited contact or to be present at or enter the workplace, residence, vehicle, or other place does not in any way invalidate or nullify the protective order.

**Sec. 18.65.890. Forms for petitions and orders; fees.**

Clarifies that the court system will prepare forms for petitions, protective orders, and instructions for their use by an employer seeking a protective order.

**Sec. 18.65.895. Service of process.**

Clarifies that protective orders should be promptly served and executed.

[3:40:01 PM](#)

**Sec. 18.65.897. Civil liability**

Creates civil liability provisions.

**Sec. 18.65.899. Definitions**

Makes the definitions of "course of conduct," "employee," "employer," "threat of violence," "violence," and "workplace" apply to the workplace violence protective statutes.

**Section 7**

*AS 22.15.100. Functions and powers of district judge and magistrate.*

Amends AS 22.15.100(9) by adding a new section (C) to give district judges and magistrates the power to issue a protective order in cases involving workplace violence.

**Section 8**

*Uncodified law - Indirect court rule amendments*

Specifies amendments to: Rule 4, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration, relating to fees and service of process for a workplace violence protective order; and Rule 65, Alaska Rules of Civil Procedure, by changing the method for obtaining and the timing of temporary restraining orders.

**Section 9**

*Uncodified law - applicability*

Makes sec. 8 conditional on approval by the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

**Section 10**

*Effective Date*

If sec. 9 takes effect, it takes effect on January 1, 2024.

[3:41:30 PM](#)

At ease

[3:42:22 PM](#)

CHAIR KAWASAKI reconvened the meeting and listed the individuals who were available to answer questions.

[3:43:00 PM](#)

CHAIR KAWASAKI opened public testimony on SB 28.

[3:43:41 PM](#)

BRENDA STANFIELD, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSAA), Juneau, Alaska, spoke of the fear that victims experience when they are threatened at home or in the workplace. She noted that getting a trespass order doesn't help if the person stands just off the victim's property and isn't committing a crime. Law enforcement won't respond in those situations. ANDVSAA victim service providers have reported that this can be a particular problem in rural communities.

MS. STANFIELD stated that SB 28 provides a mechanism for employers to protect themselves and their staff when somebody has made a threat against an employer's workplace or an employee. It will help to reduce the fear that victims experience. She said ANDVSAA is working closely with the sponsor and is very supportive of the bill.

[3:45:23 PM](#)

CHAIR KAWASAKI closed public testimony on SB 28 and held the bill in committee.

[3:45:52 PM](#)

At ease

### **SB 32-CHOKEHOLD BAN**

[3:47:25 PM](#)

CHAIR KAWASAKI reconvened the meeting and announced the consideration of SENATE BILL NO. 32 "An Act prohibiting the use of chokeholds by peace officers; and relating to justification of use of force by peace officers."

[3:47:49 PM](#)

SENATOR ELVI GRAY-JACKSON, Alaska State Legislature, Juneau, Alaska, sponsor of SB 32, thanked the hardworking peace officers and office staff that provide the services that protect the lives and welfare of the people in Alaskan communities. She described the genesis of this and six other bills that she and former Senator Tom Begich worked on together to "turn pain into progress" (TPIP). The bills employ eight specific policies that have been proven to reduce police violence by as much as 72 percent. Last year she was honored to see one of the bills signed into law.

SENATOR GRAY-JACKSON continued to introduce SB 32 by reading the sponsor statement.

Police use numerous methods to restrain and limit the movement and overall activity of someone who possess a danger to themselves or to others (including the police officer). One of the most common restraints are carotid and a tracheal choke. Both restraints impede breathing and circulation of blood. If these restraints are used incorrectly, death through asphyxiation may occur. Throughout the United States, there are cases of the misuse of chokeholds. Senate Bill (SB) 32 would assist in reducing the rate of chokeholds used incorrectly. SB 32 would further seek to improve police to community relationships by addressing a long-standing issue around the use of force.

[3:51:27 PM](#)

BESSE ODOM, Staff, Senator Elvi Gray-Jackson, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 32 on behalf of the sponsor.

**Section 1:** This amends AS 11.81.370, the Statute regarding use of force by a peace officer in making an arrest or terminating an escape by adding a new subsection that would prohibit the use of potentially lethal restraints.

SENATOR MERRICK asked whether she knew how many law enforcement agencies in the state still allow the use of chokeholds.

SENATOR GRAY-JACKSON said no.

CHAIR KAWASAKI asked whether the term "peace officer" included Village Public Safety Officers (VPSOs) and correctional officers.

SENATOR GRAY-JACKSON said yes.

[3:53:34 PM](#)

MS. ODOM presented a PowerPoint relating to SB 32. She spoke to slide 2, "National 8 Can't Wait Campaign."

- We were inspired to model local legislation after the widely-recognized national 8 can't wait campaign:

- Bans the use of chokeholds and strangleholds
  - Require de-escalation
  - Require warning before shooting
  - Require exhausting all alternatives before shooting
  - Duty to intervene (by officers that observe other officers violating practice standards)
  - Ban shooting at moving vehicles
  - Require a use of force continuum
  - Require comprehensive reporting (by officers each time they use force or threaten to use force)
- We recognize that the national campaign wouldn't fit the unique needs of Alaska, so we worked with various stakeholders to create a bill that was all encompassing of Alaska's unique needs.

MS. ODOM advanced to slide 3, "Meeting w/Stakeholders."

- Throughout the process of drafting the bills, we met with and received recommendations from the following stakeholders:
  - NOBLE (National Organization of Black Law Enforcement Executives)
  - APDEA (Anchorage Police Department Employees Association)
  - APD (Anchorage Police Department)
  - PSEA (Public Safety Employees Association)

MS. ODOM reviewed slide 4, "Bill Objectives."

- Prohibits peace officers from knowingly using a restraint that impedes another person's breathing or blood circulation that would likely cause a loss of consciousness
  - This includes carotid restraint, tracheal choke, and others that result in the aforementioned conditions.
- Chokeholds are permitted in situations where deadly force is authorized by law.

[3:55:33 PM](#)

MS. ODOM advanced to slide 5, "What Sort of Chokeholds Will be Prohibited." She reported that a survey of the nation's largest

police departments' use-of-force policies found that 71 percent prohibit chokeholds and 68 percent prohibit carotid holds.

**Chokehold**

Also called an arm bar hold. Applies pressure to the trachea, restricting airways and stopping breathing.

**Carotid hold**

Vascular hold, sleeper hold or stranglehold. Applies pressure to the carotid arteries, restricting blood flow to the brain and causing loss of consciousness.

MS. ODOM reviewed slide 6, "What We Know About the Bans on Chokeholds."

[Original punctuation provided.]

- A Post survey of the 65 largest U.S. police departments found that 46 prohibit chokeholds in their use-of-force policies, while 44 prohibit carotid holds in those policies
  - Connecticut
  - California (San Diego, Los Angeles, etc.)
  - Florida (Broward County, Miami etc.)
  - New York
  - Washington (Seattle etc.)
  - Texas (Austin, Houston, Dallas etc.)
  - Illinois (Chicago etc.)
  - Colorado (Denver etc.)
  - Arizona (Phoenix etc.)
  - Delaware
  - Iowa

[3:56:46 PM](#)

CHAIR KAWASAKI turned to invited testimony on SB 32.

[3:57:00 PM](#)

MICHAEL PATTERSON, Founder, Party for Socialism and Liberation, Anchorage, Alaska, thanked the committee for hearing SB 32 so quickly and the sponsor for being a consistent leader on the important issue relating to use of force policies for law enforcement agencies. He asked the committee to think about what it means to be choked or strangled. It is a violent act and the individual may feel they're going to die. Even if a law

enforcement officer has training, it can be dangerous employing these methods of restraint.

MR. PATTERSON stated that SB 32 will modernize Alaska's law and he believes it will show the people of Alaska that the state takes accountability and transparency very seriously. It will help people regain trust in law enforcement.

[4:03:42 PM](#)

CHAIR KAWASAKI opened public testimony on SB 32.

[4:03:51 PM](#)

DANIEL CASNER, representing self, Fairbanks, Alaska, testified in support of SB 32. He is a combat veteran who believes there is no place for chokeholds in peace officer interactions of any kind. They are not an appropriate solution for restraint and can cause serious bodily harm and even death. He urged the committee to move SB 32 forward.

[4:05:31 PM](#)

CYNTHIA GACHUPIN, Member, Party for Socialism and Liberation, Anchorage, Alaska, testified in support of SB 32. She articulated her concerns if the bill does not move forward. She said the use of chokeholds has no place in law enforcement. There are many ways to restrain someone without using potentially lethal means of restraint. She said that as a community member and mother it doesn't sit right that law enforcement officers can choose whether or not to use this potentially lethal means of restraint. She asked the committee to move SB 32 forward.

[4:08:47 PM](#)

MORGAN LIM, Lobbyist, Planned Parenthood Alliance Advocates, Juneau, Alaska, read the following prepared testimony in support of SB 32.

[Original punctuation provided.]

Thank you Chair Kawasaki and Members of the Senate State Affairs Committee. My name is Morgan Lim, I'm a Juneau resident, and I am testifying today on behalf of Planned Parenthood Alliance Advocates - Alaska. PPAA strongly supports Senate Bill 32, a bill that would limit the use of force by peace officers in Alaska. PPAA believes all people should live free from violence, and stands with Black, Indigenous, people of color ("BIPOC") communities as they demand change and

seek to create communities that are safe and sustainable.

To truly achieve reproductive justice, all people must not only have the right to choose if and when to become parents, but also the right to raise their children in a safe and healthy environment. It is the same over-policing of and violence towards Black and Indigenous bodies and their communities that makes the promise of reproductive freedom unattainable.

As our state and country continue to grapple with police brutality, SB 32 takes a step in the right direction towards reducing police use of force. According to the Mapping Police Violence database, Alaska is tragically home to the second highest rate of police killings in the country and has the second highest rate of police violence against Black and Indigenous people. About one-in-three people killed by the police is an Alaska Native person, and a Black person in Alaska is 3.3 times more likely to be killed by police as a white person.

Additionally, the rates of incarceration in Alaska have grown dramatically in the last several decades, with Black and American Indian & Alaska Native people being incarcerated at four to five times the rate of white people in Alaska. Approximately 40 percent of people incarcerated in Alaska identify as American Indian & Alaska Native people despite only making up about 15 percent of the state's population. Similarly, 7 percent of those incarcerated were Black people despite only constituting 3 percent of Alaska's population.

This over-policing of BIPOC communities, the criminalization of BIPOC people, and police violence imposes significant **transgenerational trauma**, directly harming the health of these families and their descendants.

We all deserve to live in a world where we are equally protected and have access to the resources we need to be healthy, safe, and free from harm. PPAA thanks you for the opportunity to testify on this important piece of legislation and we urge the committee to move it forward.

[4:11:38 PM](#)

AMANA MBISE, representing self, Anchorage, Alaska, stated that he is a social worker and professor of social work who is speaking in support of SB 32. He thanked the sponsor for introducing the legislation. He opined that the use of chokeholds is contradictory to the notion of peace. As a Black person he has seen chokeholds and other means of restraint cause the death of his family members. He expressed hope that the committee would pass the bill expeditiously. Doing so will send a message that the legislature cares about stopping police violence.

[4:14:13 PM](#)

JASMIN SMITH, representing self, Anchorage, Alaska, testified in support of SB 32. She is a business owner and community organizer. She thanked the sponsor and staff for their efforts on SB 32. She echoed the sentiments of previous speakers that accountability and rebuilding trust matters. It would be a sign of solidarity particularly for communities of color if SB 32 were to pass.

[4:15:57 PM](#)

LIZ LYKE, representing self, Fairbanks, Alaska, testified in support of SB 32. She stated that the bill is a step in the right direction to make law enforcement accountable. She thanked the committee for hearing the bill and urged its passage.

[4:16:47 PM](#)

PHILLIP MOSER, representing self, Juneau, Alaska, stated that he supports SB 32, but would like significant amendments because it doesn't have teeth. He opined that chokeholds are a small part of the epidemic of police brutality. The bill doesn't address what constitutes authorization to use deadly force. He would like the bill to include adequate consequences and options to use less deadly alternatives.

[4:19:43 PM](#)

SENATOR CLAMAN asked Captain Sims to discuss the trooper policy on the use of chokeholds, whether troopers receive training on the use of chokeholds, and how the exception would work where deadly force is allowed.

[4:20:29 PM](#)

CAPTAIN CORNELIUS SIMS, Commander, Division of Alaska State Troopers, Department of Public Safety, Anchorage, Alaska, stated that DPS policy and training is in line with SB 32. The use of

carotid restraint would only be used in situations where deadly force is authorized.

SENATOR CLAMAN asked for examples of scenarios a trooper might encounter in the field where deadly force and the use of the chokehold would be authorized and where it would not be allowed.

CAPTAIN SIMS answered that if a trooper or law enforcement officer's life were in danger, or they were in fear for their life, the use of deadly force would be authorized. It would not be authorized in situations where a person refused to exit their vehicle or comply with an officer's demand to put their hands behind their back.

SENATOR CLAMAN asked whether a chokehold would be authorized if a person physically fights back when an officer is trying to make an arrest.

CAPTAIN SIMS replied it would be authorized if the officer feared their life was in danger.

SENATOR CLAMAN asked whether an officer might be authorized to use a chokehold in a situation where they were intervening in a fight.

CAPTAIN SIMS replied that the law currently allows an officer to use such restraint if they can articulate that a person's life was in danger.

SENATOR CLAMAN asked if the Department of Public Safety (DPS) had a position on SB 32.

[4:24:02 PM](#)

CAPTAIN SIMS replied the department was neutral, but the bill was in line with DPS policy.

SENATOR CLAMAN asked Joseph Gamache if the language in SB 32 was consistent with the standards the Alaska Police Standards Council had adopted.

[4:24:20 PM](#)

JOSEPH GAMACHE, Executive Director, Alaska Police Standards Council (APSC), Anchorage, Alaska, confirmed that SB 32 was in line and consistent to APSC standards.

SENATOR CLAMAN asked whether APSC permits the use of the carotid hold only in situations in which deadly force is authorized and none other.

MR. GAMACHE responded that APSC has a broader overview of the law enforcement agencies throughout Alaska. Individual departments have their own policies on when the use of deadly force would be authorized.

SENATOR CLAMAN asked whether the Alaska Police Standards Council had a position on SB 32.

MR. GAMACHE replied that APSC was neutral on SB 32.

[4:26:01 PM](#)

SENATOR WIELECHOWSKI asked Mr. Gamache if there were any statistics relating to police officers in Alaska using chokeholds.

MR. GAMACHE said he didn't have the statistics but he would follow up with an answer.

SENATOR WIELECHOWSKI asked if he was aware of any disciplinary actions that had been taken against Alaska police officers for the inappropriate use of chokeholds.

MR. GAMACHE answered that he wasn't aware of any disciplinary actions involving the use of a chokehold that had risen to the APSC level.

SENATOR CLAMAN asked the sponsor or staff if APD's policy was similar to DPS's policy; they may train for the use of chokeholds but only authorize the use in situations where deadly force is allowed. Alternatively, he asked if APD's policy specifically does not allow the use of chokeholds.

[4:27:56 PM](#)

MS. ODOM stated that APD does not utilize chokeholds.

[4:28:14 PM](#)

CHAIR KAWASAKI closed public testimony on SB 32 and held the bill in committee.

[4:28:35 PM](#)

At ease

**SB 31-SELECTION AND REVIEW OF JUDGES**

4:30:06 PM

CHAIR KAWASAKI reconvened the meeting and announced the consideration of SENATE BILL NO. 31 "An Act relating to the selection, retention, and rejection of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; and relating to the duties of the Commission on Judicial Conduct."

He advised that testimony on SB 31 could be submitted to senate.state.affairs@leg.gov. He invited the sponsor to introduce the bill.

4:31:18 PM

SENATOR MIKE SHOWER, District O, Alaska State Legislature, Juneau, Alaska sponsor of SB 31, advised that a committee substitute was forthcoming. He introduced the bill by reading the sponsor statement.

[Original punctuation provided.]

Alaska's constitution is clear, there are two tiers of judges.

1. Constitutional Judges: Superior Court Judges and Supreme Court Justices must be vetted by the Judicial Council (Council) and the Governor can only select from a list of two or more names submitted by the Council. SB 31 holds constitutional judges harmless. The operating authority of this provision is: Art IV Sec 5. "The Governor shall fill any vacancy in an office of the supreme court justice or superior court judge by appointing one of two or more persons nominated by the Judicial Council.
2. Statutory Judges: District, Appellate and Magistrates. Existing statute currently follows the Judicial Council nomination process. However, judicial candidates are subject to the legislature's discretion on how they are selected, and appointed and whether they are confirmed by the legislature. SB 31 exercises the legislature's delegated constitutional authority to set policy on how these statutory judges are selected to serve on the bench. The operating authority of the provision is: Art IV Sec 4. "Judges of other courts shall be

selected in a manner, for terms, and with qualifications as prescribed by law."

Currently, magistrates serve at the pleasure of the presiding superior court judge. Appellate and District Court Judges are nominated in a statute defined process that mirrors the Art IV Sec 5 Judicial Council process.

The Council is structured to give a majority of the Alaska Bar (Bar) members the control of who gets to be a judge or justice. The deciding vote in a tie is given to the ex-officio seventh member, the Chief Justice. The Chief Justice has voted 79 times to break ties since 1984.

Additionally, all judicial candidate names are subject to a Bar member-controlled prescreening process. Bar members of the Council are appointed internally by the Bar with no legislative confirmation or administrative oversight. Virtually all the Judiciary Branch is, "beyond the reach of democratic controls." There is an old saying, "power corrupts, and absolute power corrupts absolutely." While the bill sponsor is not expressly alleging corruption within the Judiciary, it is undeniable that the Bar exercises tremendous power over the judiciary.

In a legislative briefing to a joint session of the legislature, Chief Justice Winfrey recently decried the legislature meddling in the Judiciary, claiming there are no politics in the Judiciary. If you disagree, he further implied that you are just a sore loser. He was adamant that the people's representatives should not influence the selections of judges.

[4:34:58 PM](#)

SENATOR CLAMAN called a point of order saying that the foregoing was a poor characterization of the Chief Justices' comments, and it was inappropriately disrespectful.

CHAIR SHOWER countered and then continued to read the sponsor statement.

However, the constitutional framers that sought to protect upper benches from political meddling, against

their own convention consultant's warnings, yet left the lower benches up to legislative control. Up to this point, the legislature ceded 100% control, and it mirrors the "constitutional" Alaska Bar selection controls.

The Alaska Constitutional Convention Judiciary Committee Consultants wrote, as reported by Vic Fisher in his book, "Alaska's Constitutional Convention." - "No state constitution has ever gone this far in placing one of the three branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe (emphasis added) in putting them in the hands of a private professional group, however, public-spirited its members may be.

Senate Bill 31 strikes the "safe" constitutional balance envisioned by the framers by giving the governor and the people's representatives an appropriate say in who sits on certain statutory benches. It allows the governor to appoint and the legislature to confirm who fills magistrate, district court and appellate judges. It still allows the Council to screen and recommend all candidates, but the governor is not mandated to appoint only from the Bar submitted list. The governor can nominate and appoint Judicial Council screened magistrate, district, and appellate judges. Even then, the final "safety" cross check would be an up or down vote on each appointment to the lower courts by the legislature.

The sponsor respectfully suggests that lawyers may have a conflict of interest when they rate judges for retention. They all may appear before those judges and are all sworn officers of the court. Imagine if only legislators could nominate who could run for office! Do they gain favor with judges they helped get on the bench? Do they lose favor with those they rate poorly, or vote against? The Constitution is clear, all power is derived from the people, not the Bar or any other private or trade organization. It is well past time the "people's" branch, the legislature, take back its constitutional derived authority in selection of lower judicial appointments.

SB 31 exercises the authority expressly granted in the constitution, for the legislature and governor to prescribe how Magistrates, District Court judges and Appellant Court judges are nominated and confirmed. Thus, awakening the constitutional framers long dormant approach to judicial selections.

[4:37:30 PM](#)

CHAIR KAWASAKI asked the sponsor to point out the differences between this bill and the forthcoming CS.

CHAIR SHOWER said the bottom line is that magistrates will be removed from the bill, except for the accountability section.

[4:38:43 PM](#)

SENATOR CLAMAN noted the reference to 79 times that the Chief Justice voted to break a tie when the council was considering whether or not to advance a name to the governor for nomination to a judgeship. He asked how many times names were advanced and the Chief Justice did not participate.

CHAIR SHOWER said he didn't know.

SENATOR CLAMAN asked if it was hundreds or thousands.

CHAIR SHOWER guessed that at best it would be a few hundred in the history of the state.

[4:40:07 PM](#)

SENATOR CLAMAN asked if he was saying that the council voted to advance a name to the governor just a few hundred times without the Chief Justice having to cast a vote to break the tie.

CHAIR SHOWER said he thought that was correct. He acknowledged that he didn't spend time researching that aspect of the question.

SENATOR CLAMAN asked how often in those 79 times did the Chief Justice vote in favor of advancing the name and how many time did the Chief Justice vote to not advance the name.

CHAIR SHOWER replied he didn't ask for that data; he only wanted to show that it does happen. He didn't want it to become a political issue.

[4:44:56 PM](#)

SENATOR CLAMAN said his quick review of the material in the bill packet indicated that a substantial majority of the time the Chief Justice voted to advance the name to the governor for consideration. He disputed the notion that it was a political process, and expressed interest in the sponsor's office doing an accounting so the committee knows how often the Chief Justice voted against advancing a name.

CHAIR SHOWER said he'd try to get the data. He directed attention to a document in the bill packets that describes how Alaska judges currently are selected, with the exception of magistrates. SB 31 suggests using the same attorney pool, the Judicial Council still vets and screens the candidates, and the governor would make the selection. If the governor rejects a selection, it triggers a second round. In the second round the governor would choose two names and the judicial council would choose up to four more names, the governor would choose from those names, and the legislature would vote to confirm the judges. This would apply to district and appellate courts; this would apply to 24 judges.

SENATOR CLAMAN asked if he agreed that all judges currently go through the same process for appointment.

SENATOR SHOWER said yes.

SENATOR CLAMAN opined that if some judges were to go through a processes that is not pursuant to the constitution, they would be more likely to approach things with a different degree of rigor or differently than judges who were appointed pursuant to the constitutional process. This would invite more appellate litigation and more disagreement amongst the district court and the courts of appeals with the superior court and the Supreme Court. He said it seems that the proposed process would not be as good as the current process.

[4:46:27 PM](#)

CHAIR SHOWER maintained that he was suggesting what the constitutional founders said to do. The judges will follow the rules the Supreme Court sets. He didn't see an issue.

SENATOR CLAMAN asked if he could point to an example in which a magistrate was found to owe a duty of loyalty to a superior court judge.

SENATOR SHOWER said that's unprovable, but it's a reasonable assumption.

[4:48:45 PM](#)

SENATOR CLAMAN asked if the Commission on Judicial Conduct looks at the conduct of judges and magistrates and takes action only if they are doing something inappropriate.

CHAIR SHOWER offered his understanding that the commission would investigate a complaint that was filed.

CHAIR KAWASAKI advised that testimony could be submitted to [senate.state.affairs@akleg.gov](mailto:senate.state.affairs@akleg.gov).

[4:50:40 PM](#)

CHAIR KAWASAKI opened public and invited testimony on SB 31.

[4:50:48 PM](#)

BETTY JO MOORE, representing self, Anchorage, Alaska, provided invited testimony in support of SB 31. She stated that Alaska needs judicial reform because not all judges follow the law, which violates citizens' constitutional rights. She said the selection of judges should never be controlled by a political party or the Alaska Bar. Alaska needs judges who protect Alaskans against injustices. She quoted a statement from a group of justices who acknowledged that too often African Americans, Alaska Natives, and other people of color are not treated with dignity and respect and that as judicial officers they were committed to do more to change this reality.

MS. MOORE stated that another group of people who aren't treated with the respect they deserve are the people without the education, financial means, or necessary political connections to protect their constitutional rights to protect their children from the states foster care system. She questioned whether the people in jail for crimes they didn't commit actually received a fair trial. She mentioned a survey mailed several weeks ago to all Senators and Representatives asking about the Kenai Grand Jury investigation and judicial corruption. Ms. Moore recounted the letters she had written highlighting the wrongful and inaccurate facts in an order that a superior court judge wrote, the imbalance in the judicial system, and judicial violations of constitutional rights. She charged that there was documented proof of corruption among Alaskan judges and that they needed to be impeached. She emphasized the need to stop judicial corruption and that the remedy was for SB 31 to become law and a constitutional convention to be called.

[4:55:14 PM](#)

SENATOR WIELECHOWSKI asked what percent of Alaskan judges she believed were corrupt.

MS. MOORE answered that she wouldn't give a percentage until the documentation is released, but one judicial injustice is one too many.

SENATOR WIELECHOWSKI asked if she agreed that the process to remove corrupt judges was through the retention vote.

MR. MOORE responded that the retention vote process doesn't work.

[4:57:42 PM](#)

LOREN LEMAN, former lieutenant governor and former legislator, Anchorage, Alaska, provided invited testimony in support of SB 31. He relayed a story from when he was a freshman legislator. A member of the opposite party said Alaska might have a republican governor someday but his party would always have the courts because of the way judges are selected. Over the years that's been his observation; over the last 35 years he's seen just one strict constitutionalist on the Alaska Supreme Court. He opined that every republican governor since statehood had complained about the names the Judicial Council did not advance. He provided examples. He described the current system as broken and SB 31 as a creative solution.

[5:02:16 PM](#)

FRITZ PETTYJOHN, former legislator and member of the Alaska bar, Anchorage, Alaska, provided invited testimony in support of SB 31. He mentioned a course he took during law school that advocated for lawyers to advance social justice. He said he didn't believe it then and he hadn't changed his mind. He believes that somebody who wants to advance social justice should run for the legislature, which he did. He opined that the idea that part of the job of judges and justices is to advance social justice is an anathema; their job is to interpret the law as written. Their job is not to create the law. He said there's a fight in this country over US Supreme Court justices; there are conservatives who believe in judicial restraint and liberals who believe in judicial activism. He maintained that the reason Alaska doesn't have that conflict is because the Alaska Bar Association is overwhelmingly weighted with individuals who believe that judges and the court system should advance social justice. He called that backward and opined that SB 31 was a small step in the right direction.

SENATOR SHOWER thanked the committee for staying late to hear the testimony.

5:06:06 PM

CHAIR KAWASAKI held SB 31 in committee with public testimony open.

5:06:42 PM

There being no further business to come before the committee, Chair Kawasaki adjourned the Senate State Affairs Standing Committee meeting at 5:06 p.m.