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DATE: April 13, 2016

TO: The Honorable Gabrielle LeDoux, Chair, and  
Members of the House Judiciary Committee

FROM: Mike Hostina, General Counsel, University of Alaska 

RE: Response to SB 174 Fiscal Note Questions Raised at the April 11 Hearing

At the April 11 hearing on SB 174, several members of the committee raised questions about the fiscal note associated with SB 174. This memorandum provides additional information in response to those questions.

### **Secure Access points & Screening are required by the Bill**

Under the version of SB 174 passed by the Senate, in order to prohibit weapons in “*rooms where sexual assault, sexual harassment, or domestic violence are investigated and victim assistance is provided*” or in “*rooms during adjudication of staff or student disciplinary issues and disputes,*” UA would be required to establish “*restricted access areas.*” (See p. 2, lines 16-22 of the bill.)

A “restricted access area” is defined in the bill as “*an area beyond a secure point where visitors are screened and does not include common areas of ingress and egress.*” (See p. 4, lines 3&4 of the bill.) Thus to enforce a prohibition on weapons in these areas, UA would be required by law to establish secure points and screen visitors. Presently UA can simply prohibit weapons in these areas by policy, but that would not be permitted under this version of the bill.

### **The Fiscal Note**

As reflected in the current fiscal note, the most prudent way to implement this provision is to retain a security consultant to determine 1) the most effective and efficient way to configure restricted access areas; 2) the appropriate type of screening and secure points; and 3) the improvements needed to ensure compliance with the bill.

Notwithstanding the need for such a study, in a March 7 letter to Senator Kelly (attached) the university identified rooms at its three main campuses where health and counseling services, services related sexual harassment or violence, and other similar services take place.

**1. Cost of secure access points and required screening for sexual assault, sexual harassment, or domestic violence restricted access areas.**

The university identified six rooms at UAF, four rooms at UAA, and four rooms at UAS, for a total of fourteen rooms where secure access and screening would be required. Providing a minimum of secure card access and least expensive walk-through detector (no additional personnel) the cost would be \$4,500 per room. The cost would be \$63,000 for rooms where sexual assault, sexual harassment, domestic violence, and Title IX issues are investigated or victim assistance is provided.<sup>1</sup>

**2. Cost of secure access points and required screening for rooms in which staff or student disciplinary issues and disputes are adjudicated.**

Each main campus (3) of the University has at least one dedicated room in which student disciplinary issues are adjudicated. Student academic disputes and staff disciplinary issues and disputes currently occur in a variety of places across each of our campuses. Establishing one dedicated room per campus (14) for adjudication of student disputes and staff disciplinary issues, in addition to the three rooms for student discipline, would result in a cost of \$76,500.

**3. Cost to establish secure access points and required screening for the largest dedicated K-12 programs**

To be consistent with state law regarding K-12 programming the university would establish restricted access areas at least at the Eagle River Campus for the Mat Su Middle College, at UAF for the Rural Alaska Honors Institute, and at UAA for the ANSEP program at an additional minimum cost of \$13,500.

**4. Minimum Cost to Create Needed Restricted Access Areas**

The total minimum cost to actually create a minimal number of restricted access areas under CSSB 174 (FIN) would be \$153,000. We emphasize that this is a minimum as there are likely to be other areas that should be designated as restricted access areas after further review, such as the UAF power plant, the supercomputing center, laboratories, and facilities leased to federal agencies.

As stated above, a facilities survey by a security consultant is necessary to create appropriate restricted access areas in appropriate places. Any such study is subject to the state procurement code, university procurement regulations, and a competitive award process. The university estimates that such a study will cost \$450,000 based on facility surveys conducted in the past. This amount represents \$150,000 for each main campus along with all associated community colleges and rural campuses.

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<sup>1</sup> With regard to sexual assault, sexual harassment, or domestic violence investigation and assistance, and adjudication of staff or student disciplinary issues and disputes, the current version of the bill specifies that the restricted access areas must be limited to rooms. Therefore, each room would need to be a separate restricted access area.


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*Many Traditions One Alaska*

March 7, 2016

TO: The Honorable Pete Kelly, Co-Chair, Senate Finance   
FROM: Michael Hostina, General Counsel & Matt Cooper, Associate General Counsel  
RE: Response to Questions Regarding University Requested Amendments to SB 174

This responds to your letter of March 2 to President Johnsen, seeking additional information regarding the amendments to SB 174 requested by the University. Thank you for your continuing assistance with this bill.

The requested amendments are derived from existing state law criminalizing firearm possession in certain areas or situations similar but not identical to those on University premises. The requested amendments to SB 174 would not criminalize conduct. Instead, they are narrowly tailored to achieve the same public safety goals as existing law and would permit the Board of Regents to manage specific high conflict/high risk situations common on our campuses.

In responding to your questions, we have identified the amendment sought and the parallel state laws on which the request is based.

1. *Amendment allowing the University to regulate the firearms of a student or employee demonstrating a risk of harm to self or others.*

You asked why the existing civil commitment (Title 47) process is insufficient to prevent harm to the rest of campus. The University proposed this amendment based on concerns parallel but not limited to those addressed in Title 47. The amendment is required for a number of reasons: it would allow response to threats of harm that may not be related to mental illness, or to mental illness that may fall short of the standard required for involuntary commitment to a hospital for psychiatric evaluation and treatment, i.e., "gravely disabled or likelihood of serious harm." It is also required because involuntary commitments are rare and are not an appropriate tool to address the wide range of mental health issues seen on our campuses. (By contrast, voluntary commitments are very brief and may be terminated by the patient at any time without impact on the legal right to possess firearms.) The amendment would allow the university to use a less restrictive alternative to involuntary commitment, and to instead encourage voluntary mental

health treatment with a far less damaging and significant deprivation of freedom than an enforced stay at a mental hospital.

The Report to the NRA by the National School Shield Task Force recommends that schools react promptly to behavior that indicates a risk. With the amendment, the University could intervene when student or employee behavior indicates a risk of harm to self or others, and before it escalates, to restrict weapons and take other appropriate action. For example, if a student engages in an altercation, expresses thoughts of suicide, or an employee expresses thoughts of workplace violence, the university would intervene to offer counseling or other assistance, as well as taking disciplinary or other appropriate action. As part of that intervention, the university would restrict that individual's right to carry a concealed handgun or knife on campus. Absent the amendment, the university would have fewer, less available, but more restrictive, alternatives for dealing with risk of harm to self or others, such as excluding students or staff from campus or seeking involuntary commitments. These alternatives affect other rights and can also be legally problematic.

With regard to due process, the Committee Substitute would require the university to establish a process to allow a person who is prevented from carrying a concealed handgun or knife because of a threat of harm determination to regain the ability to carry. The University supports this provision, but in any event, the university has existing staff and student disciplinary processes and student care team processes that include referral to counselors or other professionals as appropriate, and impose and provide for review of restrictions. A staff member or student who contests a restriction may appeal internally and to the courts.

The statutory language itself would provide the standard, i.e. the university would have the burden to show that the behavior of students or employees demonstrates they pose a risk of harm to themselves or others.

2. *Amendment allowing the university to regulate concealed carry of handguns and knives in university facilities housing health and counseling services or other services related to sexual harassment or violence.*

You asked a number of questions about how broadly this amendment would apply on UA campuses. At UAF, the Nordic House houses the Office of Diversity and Equal Opportunity, including Title IX investigators. The services are based on the second floor in rooms 201, 202, 203, 205, 206. The University would not restrict concealed carry in the entire building; only in the identified offices. The Center for Health and Counseling and Disability Services are located on the second floor of the Whitaker Building. The police department is located on the first floor. The University would restrict concealed carry in this building because it only houses services where the University would have authority to regulate.

At UAA, the analogous services are located in the Student Health and Counseling Center (RH 120); Psychological Services Center (SSB 225); University Police Department (ESH 114), and Equity and Compliance (ULB 108). The University would not restrict concealed carry in the entire building; only in the identified offices.

At UAS, these services are located on the lower level of the Maurant Building in rooms 114, 115, 116, and 117. The University would not restrict concealed carry in the entire building; only in the identified offices.

You also asked why the university could not rely on existing law criminalizing possession of firearms within domestic violence and sexual assault shelters receiving funding from the state. The University does not provide a “shelter” for victims of domestic violence or sexual assault. Because criminal law is construed strictly, analogous services provided by UA, like those listed above and in the amendment, receive no protection under the existing criminal statute prohibiting possession of firearms in a domestic violence or sexual assault shelter.

3. *Amendment allowing the University to regulate concealed carry of handguns and knives in student dormitories and other shared living quarters.*

You asked whether under the language of the amendment the university would prohibit weapons possession in university apartment complexes and single occupancy dorm rooms, and whether there would be distinctions for upper class, families and graduate students.

The language of the proposed amendment would not permit university restrictions in student housing that is not shared in some manner or that is not dormitory-style. As a result, the university would not impose restrictions on concealed weapons in single family dwellings or single occupant stand-alone apartments.

The University reads the proposed amendment as permitting regulation of possession of concealed handguns and knives in student dormitory rooms and shared living quarters, such as suites, regardless of whether the room itself is single or multiple occupancy. Unlike private homes or apartments, dormitories and shared student housing provide a high density, communal living environment for the convenience of students. Unlike private landlords, UA has significantly more responsibility for student well-being. UA serves as the “adult,” through residence advisors and other staff, monitoring student well-being, resolving disputes, and requiring compliance with rules. More than half of resident students are under 21 years old, may not legally carry concealed weapons, and do not necessarily get to choose their roommates. Absent the amendment, SB 174 would result in concealed weapons being present in dorms and other shared student housing where they would be accessible to ineligible roommates and/or transient guests, and where alcohol is readily available for consumption.

4. *Amendment allowing the University to regulate concealed carry of handguns and knives within parts of facilities used for dedicated programs for preschool, elementary, junior high and secondary students, and only when such programs are occurring..*

The committee substitute does not presently include this amendment.

The University is seeking a very narrow amendment. First, the amendment would be limited to allow regulation only in those portions of facilities being used for dedicated K-12 programs, while those programs are occurring. For example, if a science class for elementary students were to take place in the Murie Building, the restriction would be limited to that classroom. The University would not seek to limit concealed carry in the entire building.

As shown in the memorandum and data provided to Senator McGuire (attached), the University is only seeking to regulate possession of concealed handgun and knives in programs dedicated to K-12, where the university becomes responsible for the students (*in loco parentis*), as opposed to open house type settings where parents accompany students, and only in the parts of facilities where such programs occur, while they are occurring.

If the amendment were adopted the University would limit concealed carry in these areas by posting a notice, as it presently does, and by enforcing restrictions when it becomes aware of issues or violations.

The amendment would provide a tool to manage possession of concealed weapons in conflict situations, create consistent expectations for students and parents in the K-12 system, avoid potential accidents, and allow UA to apply the standard of care established in law for K-12.

5. *Concealed carry permits.*

In 2014, the University opposed a bill requiring a concealed carry permit to carry handguns on UA premises and requiring use of lock boxes in dorms. The bill otherwise would have prohibited university regulation of concealed carry. Under that bill, the university would not have been able to restrict possession of concealed weapons by permit holders in any of the following specific high conflict/high risk situations:

- When student or employee behavior indicates a risk of harm to themselves or others;
- In student dormitories or other shared student living quarters;
- In dedicated K-12 programs run by UA;
- In Health & Counseling, Discrimination, Harassment and Title IX offices;
- During adjudication of staff or student disputes or disciplinary issues.

In the context of SB 174, the university is proposing a permit requirement in addition to the specific ability to manage these issues. A student or employee carrying concealed in the close

quarters of university common areas, classrooms, labs, libraries, and other communal space should have some training and knowledge about gun safety and applicable law. A permit also would exclude individuals with certain criminal convictions, including a Class A misdemeanor for domestic violence or stalking, from carrying concealed on campus.

6. *During adjudication of staff or student disputes or disciplinary issues*

You did not ask about the amendment permitting university regulation during adjudication of staff or student disputes or disciplinary issues. However, the committee substitute includes language related to adjudication of staff or student disciplinary issues, but the amendment dropped “disputes.” The University adjudicates many types of non-disciplinary disputes that can be contentious, including grievances, administrative reviews, harassment or discrimination complaints, dismissals from academic programs and grade appeals. The university respectfully requests that “disputes” be included in this amendment so that the university may exclude concealed weapons during adjudication of both disputes and disciplinary issues.

Thank you for your continuing work on this bill and your service to the state. Please do not hesitate to let us know if you have additional questions.

Attachment