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Background Information

House Bill 408

Restoration of Firearm Rights in Alaska

- Under Alaska State law, a person who has been convicted of a felony is NOT prohibited from possessing a rifle or shotgun. In effect, the person's right to possess such a firearm is restored by operation of law upon the person's release from incarceration.
- Under Alaska State law, a person who has been convicted of a felony IS prohibited from possessing a firearm *capable of being concealed* on one's person (Alaska Stat. § 11.61.200(a)(1)) and, separately, IS prohibited from possessing a firearm that *is actually concealed* on the person (Alaska Stat. § 11.61.200(a)(12)).
- Alaska State law also provides, however, for an "affirmative defense" to a prosecution under either the felon-in-possession-of-a-concealable-firearm statute or the felon-in-possession-of-a-concealed-firearm statute if the person's civil rights have been restored as follows:
 - (1) For possession of firearms *capable of being concealed*, if the person has received a pardon or if the conviction has been set aside or if a period of ten years or more has elapsed since the date of the person's unconditional discharge (Alaska Stat. § 11.61.200(b)); and
 - (2) For possession of firearms that *are actually concealed*, if the person has received a pardon or if the conviction has been set aside or if a period of ten years or more has elapsed since the date of the person's unconditional discharge. The restoration of the right to possess a *concealed* firearm is further limited, however, to the following circumstances: in the person's dwelling, on land owned or leased by the person appurtenant to the dwelling or while the person is actually engaged in lawful hunting, fishing, trapping or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection (Alaska Stat. § 11.61.200(g)).

- Further, it is important to note that under Alaska State law, restoration, by operation of law after the passage of time, of the right to possess either a firearm that is *capable of being concealed* or a firearm that *actually is concealed* is limited to persons who were NOT convicted of an offense against the person (Alaska Stat § 11.41).

- It is also important to note that under Alaska State law, the rights to vote (and, as a qualified voter, to hold public office) and to serve on a jury are lost upon conviction of a felony but automatically restored, by operation of law, immediately upon the person's unconditional discharge (Alaska Stat. §§ 09.20.020; 15.05.030(a); 33.30.241).

- Under Federal law, a person who has been convicted of a "crime punishable by imprisonment for a term exceeding one year" may not possess a firearm (18 USC § 922(g)).

- Federal law also provides, however, that "any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction... *UNLESS* such pardon, expungement, or restoration of civil rights expressly provides that the person may not...possess firearms" (18 USC § 921(a)(20)).

- In the case of *Caron v. United States* (524 U.S. 308 (1998)), the Supreme Court of the United States:

- (1) Found that "nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights" so restoration of such rights by operation of law is sufficient; and
- (2) Interpreted the aforementioned "unless clause" found in 18 USC § 921 (a)(20). The Court held that an "all-or-nothing" test must be applied and that "a state weapons 'limitation' activates the uniform ban on possessing any firearm at all." In other words, a state must completely restore "all" of a person's rights and treat the person whose rights have been restored in the same manner that other law-abiding citizens are treated. If a person does not have "all" rights restored by the state then, for the purpose of federal law, the person has no rights. Subsequent cases have held that complete restoration of "all" rights includes, not only ALL firearm rights, but also the rights to vote, hold public office and serve on a jury.

- Alaska State law contains two "limitations" on persons who have had their right to possess firearms otherwise restored that are not imposed on persons who have never lost their rights and which, therefore, activate the federal ban on possessing any firearm at all:

- (1) A person whose right to possess firearms has been otherwise restored can not possess a firearm concealed outside their dwelling, property or while engaged in a lawful outdoor activity (Alaska Stat. § 11.61.200(g)(2); and
- (2) A person whose right to possess firearms has been otherwise restored would be in the position of having to raise an affirmative defense to a charge of either possessing a concealable firearm (Alaska Stat. § 11.61.200(b)) or carrying a firearm concealed (Alaska Stat. § 11.61.200(g)), while a person who never lost his or her rights cannot be charged with such a crime whatsoever.

- Unless the Alaska State Legislature amends existing law to modify these two limitations, the existing policy of the State of Alaska to allow for the restoration of firearm rights cannot be implemented without impacted persons being subject to felony prosecution under Federal law.