

HOUSE FINANCE COMMITTEE
March 21, 2005
2:17 p.m.

CALL TO ORDER

Vice-Chair Stoltze called the House Finance Committee meeting to order at [2:17:39 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Eric Croft
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Reggie Joule
Representative Mike Kelly
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

None

ALSO PRESENT

Carol Comeau, Superintendent of Schools, Anchorage; Steve Weaver, Assistant Attorney General, Legislation & Regulation Sections, Department of Law; Randy Ruaro, Attorney, Legislation & Regulation Sections, Department of Law; Suzanne Cunningham, Staff, Co-Chair Meyer

PRESENT VIA TELECONFERENCE

None

SUMMARY

HB 88 "An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

CSHB 88 (FIN) was REPORTED out of Committee with a "no recommendation" recommendation and with an indeterminate note by the Department of Health and Social Services, and an indeterminate note by the Department of Law.

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HOUSE BILL NO. 88

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

[House Bill 88 was previously heard on March 17, 2005.]

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STEVE WEAVER, ASSISTANT ATTORNEY GENERAL, LEGISLATION & REGULATION SECTIONS, DEPARTMENT OF LAW, offered to answer questions.

CAROL COMEAU, SUPERINTENDENT OF SCHOOLS, ANCHORAGE, spoke in support of HB 88. She referred to several assaults against school district employees in the Anchorage School District this past year. Vice-Chair Stoltze asked what the punishment was in those instances. Ms. Comeau replied that stricter punishment for assaults on teachers are needed. In response to a question from Vice-Chair Stoltze, Ms. Comeau deferred to the Department of Law to determine suitable punishment.

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RANDY RUARO, ATTORNEY, LEGISLATION & REGULATION SECTIONS, DEPARTMENT OF LAW, explained about misconduct involving weapons in the second degree. He referred to a letter in the members' packets from District Attorney Bob Linton regarding automatic waivers of juvenile offenders (copy on file.) He pointed out that getting a discretionary waiver is nearly impossible for a juvenile even in murder cases.

Representative Weyhrauch asked if there are federal laws that achieve what this state law intends to do. Mr. Ruaro said it depends if the shooting or event occurs on school grounds. In that case a federal law would apply. Representative Weyhrauch requested more information about related federal laws. Mr. Ruaro agreed to provide that information.

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Vice-Chair Stoltze asked for more information about lesser categories of offenses and juvenile waivers.

Mr. Ruaro explained that the only type of a possession offense that would fall under second-degree is for a person who has been previously adjudicated a delinquent for an act that would have constituted a felony, and then they possess

a weapon on school grounds or near a day care center. There were only 4-6 successful waiver cases a year.

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Representative Croft asked why some of the murder cases are not on the unclassified felony list. Mr. Ruaro said he does not know. Representative Croft expressed interest in changing the statute to "pull in murder cases" rather than target practice cases. Mr. Ruaro opined that discretion would be exercised on the part of the prosecutor.

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SUZANNE CUNNINGHAM, STAFF, CO-CHAIR MEYER, explained that the automatic waiver provision only applies when a minor is at least sixteen years old. Representative Croft said that makes sense.

Ms. Cunningham reviewed the status of the bill.

Representative Croft reintroduced Amendment 2. He MOVED to ADOPT Amendment 2, to delete line 30 on page 3. He explained that he is not opposed to how Section 4 targets specific bad conduct with guns, however line 30 is not narrowly tailored at this point. He opined that the removal of line 30 still allows the bill to retain its focus on the worst conduct for automatic waiver.

Co-Chair Meyer OBJECTED for purposes of discussion.

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Mr. Ruaro explained that omitting line 30 would delete the crime of possessing a gun at a drug deal, the crime of being found a delinquent of a felony and then possessing a gun on school grounds or at a day care, and the crime of shooting at a building from coverage of the automatic waiver provision. He maintained that those offenses are serious and he opposed Amendment 2.

Representative Hawker raised concerns about AS 11.61.195 and the definition of dwelling. He suggested cleaning up that section rather than deleting line 30. He spoke in opposition to the amendment.

Co-Chair Meyer concurred.

Representative Weyhrauch asked if there is a crime that cannot be prosecuted if line 30 is deleted. Mr. Ruaro explained that the purpose of the automatic waiver is to allow for certain serious offenses to be brought into the adult system. The difference would be between prosecuting as a juvenile where jurisdiction ends at age 19, or as an

adult. He discussed a retaliatory shooting case and how the provision would apply in that case.

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Representative Croft acknowledged that the bill does a lot of good, especially Sections 3 and 4. However, in the findings section, Section 2, it says that 29 percent of male students reported having carried a weapon. Representative Croft suggested that that is not necessarily a bad thing. A lot of students use guns for hunting and for what they were intended to be used for. He stated that he does not want to write laws that unintentionally criminalize and that rely on prosecutors to not charge in those areas. He referred to a case in Nome. He suggested that the committee take a further look at AS 11.61.195 so as to not unintentionally criminalize certain conduct.

Co-Chair Meyer pointed out that some of Representative Croft's concern about bias was corrected by deleting Section 2.

Co-Chair Chenault agreed with Representative Croft's analysis of (A) of Section 2. He noted that (B) concerns him more.

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Representative Weyhrauch observed that the figure "29.8 of male students" came from the "Alaska Youth Risk Behavior Survey 2003" on page 8 (copy on file.) The survey gives no context for the data collection. He sympathized with the intent of Amendment 2 and the unintended consequences of leaving line 30 in the bill. He wondered if House Judiciary discussed this area.

Mr. Ruaro said there are approximately eight cases a year of this type of serious crime against juveniles, not target shooters, but serious crimes. He stressed that given the low number of cases and the seriousness of them, the committee should vote no on Amendment 2.

Representative Holm gave an example of possession of a gun by a hunter who also was involved in a drug deal. Mr. Ruaro explained that the prosecutor has complete discretion on whether to charge as an automatic waiver offense or not.

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Vice-Chair Stoltze asked if it ever happens that a prosecutor overcharges in order to scare a defender. Mr. Ruaro said yes, but filters are built in such as the discovery process, the grand jury process, the jury, and the judge.

Representative Croft reviewed AS 11.61.190(a)(1) and (a)(2), and pointed out that the ideas discussed today remain in the bill and are not affected by deleting line 30.

Representative Kelly asked for a response from Mr. Ruaro. Mr. Ruaro disagreed and explained that the elements of AS 11.61.195 include possession of a gun in a drug deal, possession of a gun after being convicted of a serious crime at a school, and retaliatory shootings.

Representative Kelly shared a personal hunting experience.

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Mr. Ruaro repeated the system of filters for those kinds of situations; a whole system of fallbacks.

Representative Kelly explained that he does not like any of the process, but added that he has no use for a system of laws that would not protect citizens from drug shootings. He related a story about a murder in his district. He said he is afraid of harming someone if he votes to take line 30 out.

Mr. Ruaro related that drug deals are covered in AS 11.61.190(a)(1). Drugs and guns don't mix is the message in the second provision. The other messages are if convicted of a felony, don't carry a gun at school and don't shoot in anger at a house.

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A roll call vote was taken on the motion to ADOPT Amendment 2.

IN FAVOR: Croft, Foster, Holm, Joule, Kelly Moses, Stoltze, Weyrauch

OPPOSED: Hawker

Co-Chairs Chenault and Meyer were absent from the vote.

The MOTION PASSED (8-1).

Vice-Chair Stoltze asked if the short title fits the context of the bill. Mr. Ruaro replied that the bill has changed. Vice-Chair Stoltze suggested that the title be written to conform to the revised bill.

Representative Foster MOVED to report CS HB 88 (FIN) out of committee with individual recommendations and the accompanying fiscal notes.

Co-Chair Meyer OBJECTED for discussion purposes. He asked what the result of the discussion about the title was.

Vice-Chair Stoltze repeated that the short title would be written to reflect the contents of the bill.

Co-Chair Meyer removed his OBJECTION.

Representative Weyhrauch OBJECTED for discussion purposes. He commented that the effects of the bill will cost the state money and will require a new fiscal note.

Representative Weyhrauch withdrew his OBJECTION.

Representative Joule OBJECTED. He agreed that there would be more cost to the state.

Representative Weyhrauch OBJECTED again, voicing concern about the zero fiscal notes.

Representative Holm OBJECTED. He MOVED to ADOPT two new House Finance Committee indeterminate fiscal notes.

Representative Weyhrauch OBJECTED for purposes of discussion. He asked for the definition of "indeterminate fiscal note".

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Representative Croft defined indeterminate fiscal note. He agreed that the bill would cost more money.

Representative Hawker clarified that there "may or may not", depending on circumstances, be costs incurred by this bill.

Representative Weyhrauch noted that there are two zero notes. Representative Holm said his intent was that the fiscal notes should go back to both departments for review.

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Vice-Chair Stoltze stated that no OBJECTIONS are maintained.

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ADJOURNMENT

The meeting was adjourned at 3:11 PM