

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 2, 2006  
8:37 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 200

"An Act relating to defense of self, other persons, and property."

MOVED CSSB 200(JUD) OUT OF COMMITTEE

SENATE BILL NO. 210

"An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

MOVED SB 210 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 200

SHORT TITLE: USE OF FORCE TO PROTECT SELF/HOME

SPONSOR(S): SENATOR(S) THERRIAULT

05/10/05	(S)	READ THE FIRST TIME - REFERRALS
05/10/05	(S)	JUD
01/19/06	(S)	JUD AT 8:30 AM BUTROVICH 205
01/19/06	(S)	Heard & Held
01/19/06	(S)	MINUTE(JUD)
01/24/06	(S)	JUD AT 8:30 AM BUTROVICH 205
01/24/06	(S)	Heard & Held
01/24/06	(S)	MINUTE(JUD)
02/02/06	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 210

SHORT TITLE: VIOL. OF ALCOHOLIC BEV. LAWS/FORFEITURE

SPONSOR(S): SENATOR(S) THERRIAULT

01/09/06	(S)	PREFILE RELEASED 12/30/05
01/09/06	(S)	READ THE FIRST TIME - REFERRALS
01/09/06	(S)	JUD, FIN
02/02/06	(S)	JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Senator Gene Therriault  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of SB 200 and SB 210

Dave Stancliff, Legislative Aide  
Senator Gene Therriault's office  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced SB 200

Dean Guaneli, Chief Assistant Attorney General  
Criminal Division  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Commented on SB 200

Heather Brakes, Legislative Aide  
Senator Gene Therriault's office  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced SB 210

Anne Carpeneti, Assistant Attorney General  
Criminal Division  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Commented on SB 210

Captain Ed Harrington  
Division of Alaska State Troopers  
Department of Public Safety  
3700 East Tudor Road  
Anchorage, Alaska 99507

**POSITION STATEMENT:** Commented on SB

Doug Griffin, Director  
Alcoholic Beverage Control Board  
550 W 7<sup>th</sup> Ave., Suite 540  
Anchorage, AK 99501-3510

**POSITION STATEMENT:** Commented on SB 210

Austin Mahalkey  
Glennallen, Alaska

**POSITION STATEMENT:** Commented on SB 200

### **ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:37:54 AM](#). Present were Senators Hollis French, Gene Therriault, Gretchen Guess, Charlie Huggins, and Chair Ralph Seekins.

#### **SB 200-USE OF FORCE TO PROTECT SELF/HOME**

[8:38:18 AM](#)

CHAIR SEEKINS announced SB 200 to be up for consideration.

SENATOR GENE THERRIAULT, bill sponsor, moved version Y as the working document. Hearing no objections, the motion carried.

[8:38:58 AM](#)

DEAN GUANELI, Chief Assistant Attorney General, Criminal Division, Department of Law (DOL), introduced himself.

DAVE STANCLIFF, staff to Senator Therriault, introduced the bill. He said there were a number of issues raised at the last bill hearing that he was prepared to explain. With help from the DOL and other stakeholders, the sponsor has addressed all the issues previously raised. The changes are as follows:

#### **Changes in the CS for SB 200**

Senate Judiciary / Senator Ralph Seekins - Chair

#### **Section 1:**

Makes it clear that peace officers and other emergency service personnel are exempt from the act.

#### **Section 2:**

AS 11.81.330 is re-written affirmatively concerning the use of force for self-defense (instead of "the defense justification").

Creates an exception for those not authorized to use force under (a)(1-3) of the section if the person has withdrawn from an encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force.

### **Section 3:**

Changes terminology to "use of deadly force in self-defense" and removes the reference to non-deadly force justified under AS 11.81.330 so that the section reads in the affirmative rather than conditional as presently in the statutes.

Lists all the conditions that prevent a person from using deadly force (a)(1-4) including clarifying prohibition against on or off duty peace officers.

(b) Allows the option of retreat conditioned upon the person being attacked knows that with complete personal safety for themselves or others being defended they can leave the area of the encounter with the exceptions listed under (b)(1-4).

### **Section 4:**

Clarifies the use of force in the affirmative for defending third parties.

### **Section 5:**

Expands the right to use force to not only the owner or person in possession or control of any premises to a guest of that person.

### **Section 6:**

Clarifies the application of the law in the case of carjacking. Defines the term carjacking and the term motor vehicle as used in AS 28.40.100, an aircraft or watercraft.

MR. STANCLIFF explained the intent of the bill was to identify justification for use of force. Specific exemptions were added for people who might in the normal course of duty, have reason to break into a home.

[8:41:28 AM](#)

MR. STANCLIFF added he checked with the drafter and found that court rule change would not be required. He deferred further explanation of the changes to Dean Guaneli.

[8:42:28 AM](#)

DEAN GUANELI, Chief Assistant Attorney General, Criminal Division, Department of Law (DOL), said the intent of amending Section 2 was to take out archaic language so that people could better understand the proposed legislation. Paragraphs (1-3) clarify the justification of the use of self-defense. Subparagraphs (A) and (B) under Paragraph (4) were put into Alaska law a couple of years ago in response to increasing gang activity in Anchorage. Subparagraphs (C) and (D) are new and they reflect ongoing experience with gang activity.

[8:44:58 AM](#)

The final new provision in Section 2 explains that a person would not be justified in using self-defense if the weapon used was an illegal firearm under federal law. He noted this provision garnered much discussion in the last hearing of the bill. There are current cases in Anchorage where felons are claiming self-defense when in reality they were out on the streets with illegal weapons.

[8:47:30 AM](#)

Section 3 is the primary provision for using deadly force. A person would be allowed to use deadly force if it is necessary to do so to protect oneself against death, serious physical injury, kidnapping, etc. What has been added is "sexual abuse of a minor in the first degree." Further, Section 3 expands the areas where people justified in using self-defense are not required to leave the area even when they could do so in complete safety. In effect, they would be allowed to stand their ground. Paragraph (4) maintains a person is not required to leave the area when protecting any child or a member of one's household.

[8:49:53 AM](#)

These are significant changes because they recognize the ability of a person to stand their ground and to use deadly force even recognizing the fact that a person could leave the scene of the encounter with safety. This is an expansion of the right of self-defense and it should make people feel more comfortable if confronted with that situation.

[8:50:23 AM](#)

Section 4 contains stylistic changes, which make it read better. It essentially says that a person could use force to protect another to the extent that the other person could use force. If it were a child being defended, the person defending that child would not be forced to retreat from the area.

Section 5 is a minor amendment, which would allow guests in a home to use non-deadly force to prevent trespassers, and to use deadly force to prevent burglaries.

Section 6 is amended to allow deadly force when a person's vehicle is being carjacked. Mr. Guaneli said carjackers are generally desperate individuals and allowing citizens to stop the carjacking would be worthwhile. Additionally if there were another person inside the vehicle it would be allowable to use deadly force to terminate the theft.

[8:53:30 AM](#)

Section 6 (f) makes it clear that a person does not have to leave the area once that person has stopped a crime. Subsection (g) is the definition of a carjacking, and vehicle is defined broadly to include aircraft and watercraft.

Section 7 is repealed.

MR. GUANELI cautioned that people should not be allowed to use deadly force for minor issues, such as trespassing. Due to the many property disputes in Alaska, this is important to clarify.

[8:56:07 AM](#)

MR. GUANELI stated SB 200 is a good bill that deals with gang activity and it also gives honest citizens the ability to protect themselves and their families.

[8:56:52 AM](#)

SENATOR THERRIAULT said Alaskans have always been supportive of Alaskans using weapons for self-protection, but most everyone would agree that convicted felons would lose that right. On the other hand, he said, the majority of Alaskans would agree that a guest in a home, even if he were a convicted felon, should be allowed to assist a homeowner in protecting his property and family.

[9:00:28 AM](#)

SENATOR HUGGINS referred to Section 6 and asked Mr. Guaneli whether the definition of carjacking would include robbing the car owner as well.

MR. GUANELI responded with the distinction between a vehicle theft and carjacking. Vehicle theft generally doesn't pose the same threat as a carjacking, which happens when the vehicle is taken with force.

SENATOR HUGGINS asked for clarification whether the perpetrator would have to rob the person as well as take the vehicle.

MR. GUANELI admitted that was an excellent point.

[9:03:38 AM](#)

CHAIR SEEKINS agreed and said clarification of the definition was needed.

MR. GUANELI suggested a conceptual amendment might clarify it.

[9:05:04 AM](#)

SENATOR THERRIAULT moved Amendment 1 conceptually.

Section 6, subsection (g), after the words "robbery of" insert "a vehicle from..." After the words "possession of", insert "that." Hearing no objection, Amendment 1 was adopted.

[9:06:02 AM](#)

SENATOR GUESS referred to Section 2, subparagraph (C) and admitted she was having a hard time accepting that the activity describes a gang establishing territory.

MR. GUANELI informed the committee it would be a matter of proof for the prosecutor. Proof would have to be shown that the person did have a history of gang violence. That particular section would allow the prosecution to bring forward evidence that they previously could not bring. It would assist in painting a clear picture to the jury of what really was happening during the incident. Oftentimes due to the inadmissibility of evidence the jury is prevented from seeing the full picture. The criminal division is fully prepared to bear the burden of proof and the DOL is comfortable with it.

[9:08:18 AM](#)

SENATOR GUESS advised committee members that she had to leave for another meeting.

CHAIR SEEKINS asked Mr. Guaneli whether the section would apply in terms of battles between gangs that occur in neutral territory.

MR. GUANELI said yes. Oftentimes turf battles do start in neutral territory. The ultimate intent would have to be proven.

SENATOR FRENCH commented it was difficult to figure out how many different prongs that Section 2, subparagraph (C) contained. He asked whether a person could claim self-defense in response to perceived conduct by a rival or perceived rival, and whether that person could use deadly force.

[9:11:04 AM](#)

MR. GUANELI explained it would be a separate way of establishing [indisc]. He pointed to line 25 and highlighted "for control over the area." The end of that sentence highlights that the action would have to be intent to control an area or neighborhood.

SENATOR FRENCH emphasized it was important to make a record for the argument. There are many different types of rivals, for example, sports rivals or love rivals. He added, in reference to subparagraph (D), felons could still use a baseball bat, a crossbow, or a taser.

MR. GUANELI agreed all of those types of weapons would be legal for an ex-felon to possess.

CHAIR SEEKINS noted it wasn't only felons who had restrictions to firearms.

MR. GUANELI agreed. Under federal law a person convicted of certain types of domestic violence assaults are also prohibited from having firearms.

[9:13:24 AM](#)

CHAIR SEEKINS noted someone convicted of a fourth degree domestic violence assault could no longer be able to defend him or herself with a firearm.

MR. GUANELI agreed.

SENATOR FRENCH clarified that the exclusion from the "duty to retreat" does not trump the remaining common law prohibitions on self-defense, which says a person can't be the first aggressor or be involved in mutual combat.

MR. GUANELI agreed. All of the common law principles still apply. Additionally, the general requirement for using deadly force is that it has to be reasonably necessary to do so.

9:15:02 AM

SENATOR FRENCH posed a hypothetical where a woman takes a man's car, puts her children in the back seat, and drives off to escape an abusive situation. He asked whether the man would be able to claim self-defense if he shot and killed the woman.

MR. GUANELI responded that was an interesting hypothetical. If it were his car, she would not have the authority to take it. Under the provision, deadly force could be used.

SENATOR FRENCH asked whether the state would be able to claim necessity. The vehicle theft would have been a lesser offense than continued assault on her and her children.

9:17:10 AM

MR. GUANELI said the general defense of necessity would mean that no one could possibly prosecute the woman for taking the car. From the standpoint of the man, however, his car is being stolen. Under the provision, he could use deadly force to stop the theft because there are other persons in the car. Obviously the intent is not to allow self-defense in that situation. He offered to give some thought to the situation and admitted that was not a far-fetched scenario.

SENATOR FRENCH said he did not have an easy solution for the concern. Other than that, he said he liked the bill.

CHAIR SEEKINS asked Mr. Guaneli the definition of "official duties."

9:19:47 AM

MR. GUANELI advised official duties of a peace officer would be those imposed by the agency that employs the police officer. Many agencies have an expectation that if something serious is happening, the off-duty officer should take action.

CHAIR SEEKINS observed most people would use whatever they could find to defend him or herself and not necessarily be concerned at the moment whether the firearm was illegal under federal law. He expressed concern that the legislation might prohibit someone from using a firearm to defend him or herself.

9:24:31 AM

MR. GUANELI responded the bill could be narrowed to clarify that a convicted felon would not be able to use an illegal firearm.

SENATOR THERRIAULT said he had not given much thought to the domestic violence aspect. He agreed with Chair Seekins that situation could be problematic since it is not unheard of for lawyers to advise clients to provoke a situation in order to obtain a restraining order.

[9:27:07 AM](#)

CHAIR SEEKINS said a narrower definition would be necessary. The intent is to dis-allow dangerous felons from using weapons and then claiming self-defense.

SENATOR HUGGINS agreed with Senator Therriault.

SENATOR FRENCH offered a conceptual amendment to specify convicted felons.

[9:29:15 AM](#)

CHAIR SEEKINS said he would be satisfied if Senator Therriault could work on that. He then posed a hypothetical situation where someone could be trying to steal something that is illegal to possess.

MR. GUANELI noted as the law is currently written; the person being robbed would still be able to protect himself, although there is an exception for being a participant in a felony drug transaction.

CHAIR SEEKINS clarified a person has the right to protect themselves against robbery even if it is an illegal substance.

[9:32:09 AM](#)

CHAIR SEEKINS asked Mr. Guaneli the reason that the title of Section 4 does not identify defense of self.

MR. GUANELI said the contents of Section 4 make it clear that a person could protect themselves and another person. The first draft included specific titles for clarification. The legislative drafter felt it was better to leave the title as it was. From a legal standpoint, the title of the provision has no legal significance.

[9:34:03 AM](#)

CHAIR SEEKINS asked whether Mr. Guaneli felt that Section 4 allows the use of the same force as Section 2 and Section 3 if defending someone else.

MR. GUANELI said yes.

SENATOR THERRIAULT said his intent during the re-write was to make the law more understandable. He suggested the Chair might ask the drafter to clarify Section 4 by adjusting the title.

[9:35:57 AM](#)

CHAIR SEEKINS said the titles were inconsistent but then he questioned the need to change it.

SENATOR THERRIAULT offered Amendment 2 conceptually. On Page 2, lines 28-29, add language to limit the provision to people who have been convicted of felonies.

[9:37:53 AM](#)

Hearing no objection, Amendment 2 was adopted.

[9:38:24 AM](#)

SENATOR FRENCH said for the record he was concerned over the domestic violence hypothetical he offered earlier.

CHAIR SEEKINS said it is not the intent of the bill to allow a person to use deadly force against another person who is fleeing an abusive situation.

MR. GUANELI noted something could be drafted to address that situation.

[9:39:57 AM](#)

CHAIR SEEKINS asked for public testimony.

[9:40:14 AM](#)

AUSTIN MAHALKEY, Glennallen, said it appeared most of his questions had been answered but he was concerned about a peace officer being injured due to not identifying him or herself.

SENATOR THERRIAULT said that language was originally in the bill. He speculated the drafter felt it was given that an officer, in the official course of duty, would have properly identified him or herself.

MR. STANCLIFF agreed and said the drafter felt that was covered.

SENATOR THERRIAULT said in the terminology it implies that the officer has taken the appropriate steps of the department to provide adequate identification. He offered to double-check it but suspected the drafter took that language out due to redundancy.

[9:42:58 AM](#)

CHAIR SEEKINS said he understood that peace officers and emergency response personnel have an affirmative responsibility to identify their official capacity.

MR. STANCLIFF agreed, with the exception of officers working undercover.

[9:44:33 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR THERRIAULT pledged to continue to work on the bill. He moved CSSB 200 (JUD) from committee as amended and with attached fiscal notes. Hearing no objection, the motion carried.

CHAIR SEEKINS announced a brief recess at [9:45:22 AM](#).

**SB 210-VIOL. OF ALCOHOLIC BEV. LAWS/FORFEITURE**

[9:51:43 AM](#)

CHAIR RALPH SEEKINS announced SB 210 to be up for consideration.

SENATOR GENE THERRIAULT, sponsor, introduced the bill and said SB 210 makes changes to current law to better assist law enforcement in protecting communities that have chosen to limit the sale or possession of alcohol under local option laws.

HEATHER BRAKES, staff to Senator Therriault, further explained that in 2004, Congress established the Alaska Rural Justice and Law Enforcement Commission, recognizing that many rural communities face the highest alcohol abuse and family violence rates in the country. The Commission presented recommendations to the Alaska Legislature and SB 210 was drafted in response to some of the recommendations of the Commission.

The bill would make it clear that alcohol transported by common carrier in violation of local option laws could be seized and forfeited. It allows the authority to seize property determined to have been purchased or obtained through illegal importation or sale of alcohol. It proposes to streamline forfeiture proceedings for a person who may claim an interest in property

that has been seized. SB 210 provides a definition for manufacture of alcohol in the statutes and clarifies inconsistency in statutes as it relates to the quantity in possession.

There are over 100 communities that have chosen a local option to limit or completely ban the sale or possession of alcohol. According to the Department of Public Safety's 2004 annual report, bootlegging remains a lucrative business in rural Alaska.

[9:55:41 AM](#)

CHAIR SEEKINS referenced Page 1, line 6, and the word "municipality" and recollected a couple of years ago the Legislature used the word "community" and allowed a community of 20 or more to adopt alcohol possession limits. He said at the time he wondered why they would allow a community of 20 or more people to make a decision as to what constituted a felony in terms of possession, sale, and importation of alcohol.

[9:58:05 AM](#)

CHAIR SEEKINS called for public testimony.

DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, clarified that the term "established village" is the term of art used in Title 4, which is being amended by Section 1 of SB 210. The definition is found in AS 04.21.080(B)(9). An established village means an area that does not contain any part of an incorporated city or another established village. The definition is very clear in statute.

[10:00:18 AM](#)

SENATOR HOLLIS FRENCH referred to the forfeiture timeline. He asked whether someone could explain the minimum timeline between the seizure of alcohol and some property, and the sale of the property.

[10:02:02 AM](#)

CAPTAIN ED HARRINGTON, Alaska State Troopers, responded and informed the committee the way that property is currently seized is through adjudication of the case through the court system. Typically the property is not forfeited to the state until the case is decided through the court, which typically takes between 6 and 12 months.

[10:03:06 AM](#)

SENATOR FRENCH asked Captain Harrington whether SB 210 would change that timeline.

CAPTAIN HARRINGTON said it could. He said the bill would make the procedure for seizing alcohol consistent with the procedure that the state uses for seizing property related to drug activity. It could shorten the timeframe for seizure if handled in the civil manner.

[10:04:33 AM](#)

SENATOR FRENCH asked the witness to explain the changes in the seizure timeframe.

CAPTAIN HARRINGTON replied he has not experienced using the civil process and could not describe the steps. He said it was cumbersome to use and the troopers generally forfeit the property through the criminal prosecution of the case. He could not say exactly how long the process would take.

SENATOR FRENCH remarked that it was important to know the time frame between the time of the arrest and the time that the property would be disposed of. He said many people leave Alaska in the winter and their property could be used for illegal activity. He expressed concern that people should have the opportunity to assert claim of their property before it is sold by the state.

[10:06:48 AM](#)

CAPTAIN HARRINGTON offered his experience was that property owners have always had ample opportunity to respond. The Department of Public Safety (DPS) does a good job with keeping people informed.

ANNE CARPENETI, Criminal Division, Department of Law (DOL), said the DOL worked with the sponsor on the bill and they support it. The DOL already has the opportunity to proceed civilly to seize and forfeit property used in violation of Title 4. The bill doesn't give additional authority; it just defines some of the procedures to make it clearer of how to proceed. Once the property is seized and the DOL does not know who owns it, the current statute dictates after 30 days the DPS would publish it in the newspaper. People who are acting illegally will tend to not claim that property.

[10:08:48 AM](#)

The new provisions clarify the length of time a person has after the notifications have been posted in the newspaper, to file an

answer to the complaint filed in court, and they have recourse to litigation to recover the property. SB 210 gives people a timeline to file an answer in court.

SENATOR FRENCH asked Ms. Carpeneti the number of days after the seizure that the property would be sold and the money forfeited to the state.

MS. CARPENETI replied at a minimum it would take 30 days plus the time that it takes the court to schedule the hearing, which would usually take about 60 days. It would probably take 6-12 months.

[10:10:45 AM](#)

CHAIR SEEKINS asked whether the bill would do anything to interrupt the rights of lien holders.

MS. CARPENETI replied that it would not.

SENATOR THERRIAULT referred to page 3 lines 26-27 and asked whether that language mirrored the language that dealt with drug forfeitures.

MS. CARPENETI said lines 26-27 were actually a statement of current law. Alaska state law presently allows the DOL to proceed in connection with a criminal prosecution or in connection with an "in rem" proceeding against the property itself.

[10:12:50 AM](#)

MR. GRIFFIN testified in support of SB 210 and offered to answer questions.

CHAIR SEEKINS closed public testimony.

SENATOR THERRIAULT asked whether a fiscal note accompanied the bill.

MS. BRAKES advised the fiscal note was pending.

MS CARPENETI reported the DOL does not believe SB 210 would have a fiscal impact.

SENATOR THERRIAULT moved to report SB 210 out of committee with individual recommendations and a pending fiscal note. Hearing no objections, the motion carried.

There being no further business to come before the committee,  
Chair Seekins adjourned the meeting at [10:15:24 AM](#).