

HOUSE FINANCE COMMITTEE

April 8, 2010

9:07 a.m.

9:07:10 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 9:07 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Mike Doogan
Representative Neal Foster
Representative Les Gara
Representative Reggie Joule
Representative Mike Kelly
Representative Woodie Salmon

MEMBERS ABSENT

Representative Allan Austerman
Representative Anna Fairclough

ALSO PRESENT

Representative Nancy Dahlstrom; James Armstrong, Staff, Representative Bill Stoltze; Representative Jay Ramras, Sponsor; Representative Mark Neuman, Sponsor; Rod Arno, Executive Director, Alaska Outdoor Council, Palmer; Jane Pierson, Staff, Representative Jay Ramras.

PRESENT VIA TELECONFERENCE

Brian Judy, Alaska State Liaison, National Rifle Association; Richard Patterson, Bush Pilot, Kotzebue and Barrow; Eric Stanley, Kenai; Wayne A. Ross, Attorney, Anchorage; Travis Maxim, Co-Owner, SecureTrans Armored, Inc., Anchorage; Bill Satterberg, Fairbanks; C. E. Tanner, Anchorage; Mike Milligan, Kodiak; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; James Hotai Williams, Valdez;

Lt. Rodney Dial, Alaska State Troopers, Department of Public Safety.

SUMMARY

HB 381 SELF DEFENSE

CSHB 381(JUD) was REPORTED out of Committee with a "do pass" recommendation and with attached new fiscal note by the House Finance Committee for the Department of Law and previously published fiscal note: FN1 (DPS).

HB 408 MISCONDUCT INVOLVING WEAPONS

CSHB 408(JUD) was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal notes: FN1 (LAW), FN2 (DPS).

HB 424 G.O. BONDS FOR EDUCATION PROJECTS

HB 424 was HEARD and HELD in Committee for further consideration.

#hb424

HOUSE BILL NO. 424

"An Act providing for and relating to the issuance of general obligation bonds in a principal amount of not more than \$1,000,000 for the purpose of paying the cost of education projects for public schools and the University of Alaska; and providing for an effective date."

9:09:02 AM

JAMES ARMSTRONG, STAFF, REPRESENTATIVE BILL STOLTZE, explained that the legislation would appropriate \$1 million to the Education Project Fund and would be similar to a measure voters passed in 2002 for \$236 million. He noted that a CS was forthcoming.

HB 424 was HEARD and HELD in Committee for further consideration.

#hb381

#hb408

HOUSE BILL NO. 381

"An Act relating to self defense."

HOUSE BILL NO. 408

"An Act relating to misconduct involving weapons."

[9:10:41 AM](#)

REPRESENTATIVE JAY RAMRAS, SPONSOR, called the legislation [HB 408] a restoration of rights and explained that it would create an alignment between federal and state statute. The measure related to felons convicted of non-violent crimes as long as 40 years ago who have not been able to possess a gun. He referred to testimony in the House Judiciary Committee.

Representative Ramras reminded the committee of previous legislation related to minors consuming alcohol; those affected were not able to join the military until they were 21 years of age because of probationary status set by the state of Alaska, and an alignment between state and federal law was necessary. He believed there was a similar lack of alignment between state and federal law related to gun rights.

Representative Ramras continued that Alaska is assertive in restoring rights but maintains a few prohibitions, including AS 11.61.200(g) and (b) prohibiting a person from carrying a concealed firearm. The federal law says that all rights must be restored; although people have regained rights in Alaska, without the alignment, the rights cannot be applied.

Co-Chair Stoltze thought the titles brought up concerns.

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Representative Ramras explained that under Alaska law, a person convicted of a felony is not prohibited from possessing a rifle or shotgun. However, the person is prohibited from possessing a firearm capable of being concealed and prohibited from possessing a firearm that is actually concealed. In other words, an Alaskan cannot have a handgun and cannot conceal it. Alaska law currently

provides an affirmative defense for an ex-felon for either of the crimes of a felon in possession of a concealable firearm or a felon in possession of a concealed firearm. A person meeting one of three conditions can use the affirmative defense to prove their innocence in court. The conditions are:

- The person has received a pardon.
- The conviction has been set aside.
- A period of ten years has passed since the person was charged with the crime.

Representative Ramras noted that the state makes a distinction between violent and non-violent crimes. Under federal law, a person convicted by a crime punishable by a term of imprisonment for more than one year may not possess a firearm. However, federal law also provides that any conviction that has been expunged, set aside, or for which a person has been pardoned or had their civil rights restored shall not be considered a conviction unless it has been expressly provided that the person shall not possess firearms.

Representative Ramras pointed out that the state and the federal government track similarly, but unless a perfect alignment is created, the rights of Alaskans will not be restored. He referred to an interpretation resulting from the 1998 U.S. Supreme Court case (Caron v. United States) which mentions an "all or nothing" test. He asserted that the standard was the root of the legislation and should be the objective. Current Alaska law contains two limitations on persons who have had their rights to possess firearms otherwise restored: the possession of a concealed firearm on their dwelling property or when engaged in outdoor activity; and the affirmative defense for a person charged with possessing a concealable firearm or carrying a concealed firearm if they have been pardoned, received a suspended sentence, or if ten years has elapsed since an unconditional discharge.

Representative Ramras argued that unless the Alaska legislature amends existing law to modify the two limitations, the existing policy allowing for restoration of rights cannot be carried out. He underlined that without amendment, Alaskans who had rights restored many years ago cannot participate in the enjoyment of Second Amendment rights. He noted that the measure would apply to a full

spectrum of Alaskan lifestyles, including Natives, non-Natives, rural, and urban Alaskans.

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Representative Joule expressed support for the legislation and described the experience of a person who was not able to carry a weapon even to protect himself and others, even though he was a search-and-rescue pilot. Representative Ramras agreed that the prohibition was unnecessary in Alaska.

Representative Gara asked whether the Department of Law (DOL) would testify on the issue. Representative Ramras responded that the committee would hear a policy call from DOL. He reported that in the Judiciary Committee, DOL addressed the question of switching the burden of proof when someone from another state had rights restored. The Judiciary Committee had decided the policy call should be for the benefit of the kind of Alaskans that Representative Joule depicted and not those brought up by DOL.

Representative Gara stated that he wanted to talk to DOL to understand the legislation, not to ascertain its position on the legislation.

Co-Chair Stoltze noted that there would be testimony [by DOL] connected to another [related] bill [HB 381].

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REPRESENTATIVE MARK NEUMAN, SPONSOR, presented HB 381. The legislation would expand the rights of Alaskans to stand their ground in self-defense from just their home and workplace while defending members of their household to any place where they have a right to be. He explained that current law permits the use of deadly force for self-defense in a few specific instances (when threatened with a crime, murder, rape, kidnapping, physical injury, or robbery), but Alaska law states that a person is not justified in using deadly force if provoking someone with the intent of causing a threat.

Representative Neuman detailed that a person can be tried for deadly force if they provoke an attack while engaged in criminal behavior such as a gang-related shooting. There must be justification in using deadly force; HB 381 would

not change those statutes. Current law requires that a person must retreat when possible even if they are faced with or involved in a serious crime. This means that even when it is beyond dispute that a person was threatened with the use of deadly force, a person can be brought to trial. He relayed the experience of a minister who used deadly force defending his church and ended up in prison.

Representative Neuman understood that the courts were addressing the issue of the ability to retreat. He believed the determination had to be made in a split second under threat. He wanted clarification. He believed a person who is threatened while somewhere they have a right to be has the right to defend themselves and not be victimized a second time in court. He maintained that he had worked with the Judiciary Committee to make the bill better.

Co-Chair Stoltze informed the committee that HB 408 and HB 381 would be dealt with separately but public testimony would be taken on both at the same time. He opened public testimony.

[9:24:51 AM](#)

BRIAN JUDY, ALASKA STATE LIAISON, NATIONAL RIFLE ASSOCIATION (NRA) (via teleconference), spoke in support of both HB 408 and HB 381. Beginning with HB 408, he emphasized that the bill was not about giving firearms to felons, as the state already has the policy of restoring firearm rights to former offenders. The right to possess rifles and shotguns is restored immediately upon release from incarceration. A person's right to possess handguns is restored if they receive a pardon, if the conviction is set aside, or after ten years of an unconditional discharge. With the right to possess handguns comes the right to carry handguns openly anywhere in the state. Third, the right to carry concealed weapons is restored; however, the right is limited to a person's home, property, or where they are engaged in lawful activity such as hunting, fishing, camping, and so on.

Mr. Judy informed the committee that currently 95 percent of an individual's rights are restored by the state. He noted that the only real restriction imposed on a person whose rights were restored is that the person cannot cover a handgun (such as with a coat) that they can otherwise legally carry openly outside their home, property, or while

engaged in lawful activities anywhere. He added that the right to vote, the right to hold office, and jury rights are restored as well.

Mr. Judy explained that because of a complicated, technical interaction between state law and federal law, persons who have had all the listed rights restored by the state of Alaska are still not recognized as having any rights for the purpose of federal law because of the U.S. Supreme Court decision in *Caron v. United States* and the "all or nothing test" discussed by Representative Ramras that must be applied. The court ruling stipulated that any state weapon limitation activates the uniform federal ban on possessing any firearms. Because Alaska does not go the last step and allow people to carry concealed weapons any place they can carry openly, the people have no rights. He emphasized that HB 408 would take people from having 95 percent of their rights to 100 percent; from the perspective of the federal government, they would be taken from zero to 100 percent. He agreed that the bill would achieve an alignment of state and federal law.

Mr. Judy reported that the NRA hoped that with HB 408, legislators could get beyond the perceived stigma of "giving firearms to felons" and realize the legitimacy of allowing people who have long since paid their debt to society to attain the restoration of rights already provided by the state of Alaska but extinguished because of the interaction between state and federal law and the U.S. Supreme Court decision.

Mr. Judy spoke to HB 381. He noted that existing Alaska law provides that there is no duty to retreat if a person is facing criminal attack on premises that they own or lease, or where they preside or work. The bill would extend the rights to any place a person has a legal right to be. Under HB 381, a person who is attacked while walking down the street would have no duty to retreat; they could stand their ground and fight, and meet force with force. The NRA believed the measure made common sense. Under existing law, a person faced with criminal attack outside their home, property, or business must ask two questions: whether there is justification to use deadly force in self-defense, and whether they can with complete safety leave the area and give ground to the attacker. The bill would take away the second determination. He emphasized that there would be no impact on justification; a person still must be justified

in employing self-defense. Under current law, a person who resists an aggressor bears the risk of a finding in court that although their response was proportional to the reasonably-perceived threat, they overestimated the difficulty of getting away and therefore were not justified in reacting with defense of force. Removing the retreat provision shifts some of the risk calculation back to the aggressor. The NRA believes that victims should have the protection of law, not criminals; law-abiding citizens should not fear criminal prosecution and be victimized a second time by the criminal justice system.

Mr. Judy noted that in past hearings, the opposition has suggested that the law would increase violence in Alaska and could encourage the needless taking of human life. He pointed out that the same law had been enacted in at least sixteen other states without increasing violence.

Mr. Judy maintained that the "sanctity of life" argument used by opposition went both ways. He believed sanctity of life issues were less compelling when the person whose life was taken was behaving in such a way that the person who took their life "reasonably" feared being raped or killed, which is required under the justification statute. He asserted that rapists are not deterred by rape laws, but the hesitation of a law-abiding victim to apply defense of force while considering retreat capability may mean the difference between life and death.

[9:33:41 AM](#)

Representative Gara did not want to debate issues that he did not think were debatable. Currently, the law stipulates that a person in the middle of a rape or robbery has a duty to self-defense and can shoot the assailant. He asserted that the legislation would not change that. A person only has to retreat when it is 100 percent clear that the person can retreat with complete personal safety. He believed the facts were muddled. He suggested that there were other circumstances in which the bill could be useful and needed. He queried the existence of cases in which someone was convicted for defending themselves in the middle of a rape.

Mr. Judy distinguished between the beginning and the middle of a rape. He understood Representative Gara's point: under existing law a person who can retreat with complete safety is required to do so. He felt that the victim would have to

make another decision in the life-or-death, split-second circumstance: whether they could retreat with complete safety before the rape happened. He asserted that the legislation would not modify the justification; however, a person could be found to have been justified, but could also be found to have overestimated the ability to retreat and could be charged with a crime.

Representative Gara stated that he was not aware of any circumstance in which a person in a rape situation was charged with inappropriately defending themselves under existing law. He reiterated concerns.

[9:37:30 AM](#)

RICHARD PATTERSON, BUSH PILOT, KOTZEBUE AND BARROW (via teleconference), spoke in support of HB 408. He provided an overview of his experience in Alaska as a pilot. He informed the committee of past mistakes he had made; he had gotten help, corrected his ways, and become a helpful citizen. He asserted that executive clemency (which he received) is vested solely in the executive branch and is assured by the separation of powers doctrine (Handbook of Alaska State Government, page 4). The clemency power of the governor is guaranteed by the Alaska Constitution, Article III, subpart 21, which all legislators have sworn to protect and defend.

Mr. Patterson stressed that the governor has absolute and unfettered authority to pardon under the law. The clemency process is long and arduous and rarely granted; it has only been granted twice since 1995. Extraordinary circumstances and exemplary rehabilitation must be proved.

Mr. Patterson described the pardon he had been given, which specifically restored his right to possess and use handguns. He read from Alaska's Clemency Handbook:

A pardon is a form of executive clemency, which if full and unconditional relieves an offender from further punishment and disabilities imposed by reason of a criminal offense. It is an act of grace which represents forgiveness for a particular crime.

Mr. Patterson noted that both state and federal law rule that words are to be interpreted according to ordinary meaning and both recognize the pardon's valid and

restorative power regarding firearms. He argued that even a person wrongfully convicted and pardoned could not possess firearms currently under AS 11.61.200. He did not believe distant officials could understand what it was like to be stalked by grizzly or polar bears, or to, unarmed, clear the area around his home of dangerous animals so that his children could safely get to school. He thought case law had been misinterpreted and applied incorrectly.

Mr. Patterson maintained that he still endured the worst punishment of all, in spite of the pardon: the right to defend his life and the lives of those around him. He noted that other states have similar statutes that restore firearm rights to fully-pardoned state ex-offenders. In addition, presidential pardons restore firearm rights to federal ex-offenders. He stressed that the ramifications are great, even if the numbers of people affected might be small.

Mr. Patterson described the risks of serving others in the Arctic while not being adequately prepared.

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Representative Joule acknowledged Mr. Patterson's effort.

ERIC STANLEY, KENAI (via teleconference), spoke in support of HB 408. He agreed with the previous testifier. He described experience of not being able to defend or protect his family while engaging in subsistence activities. He acknowledged past mistakes and believed he had paid his debt to society. He thought people saw felons as violent people, comparable to pit bulls, but asserted that he was not a violent person. He believed people who had made mistakes in the past and were convicted of a felony have a label that burdens them.

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WAYNE A. ROSS, ATTORNEY, ANCHORAGE (via teleconference), spoke in support of both HB 408 and HB 381. He believed HB 408 would affect subsistence hunters who have paid their debt to society but cannot own a gun, even though the legislature has said they can under state law. He pointed out that the legislation would affect people who have had pardons but still cannot bear arms. He called the measure the "Stand Up for Alaskans" bill.

TRAVIS MAXIM, CO-OWNER, SECURETRANS ARMORED, INC., ANCHORAGE (via teleconference), testified in support of HB 408. He relayed experience with an employee who was not allowed to bear arms because of a past charge for a non-violent theft. He thought there was a lot of confusion about the current law, evidenced by how the state had handled the employee's licensing requirement. The state had said the employee was allowed to carry a firearm while working as an armed guard. The state then said he could work, but would not be issued a license, based on his criminal record. Two years went by at that status, and then he was told he could not carry a handgun. His job duty was changed to inside the building, where he would not need a handgun, while anticipating his ability to carry a gun at the ten-year mark, as the state had promised. However, the employee had just completed the ten-year period, but the state changed direction and determined that he would never be allowed to carry a firearm. He hoped HB 408 would rectify the situation.

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BILL SATTERBERG, FAIRBANKS (via teleconference), testified in support of HB 408. He thought the measure was important. He thought there was a problem in Alaska related to people who have made mistakes in their youth for which they received a suspended imposition of sentence (SIS). He emphasized that the crimes discussed were not those against people but against property. The people had been told by the courts, by counsel, and by Probation and Parole up until last April that they would have their weapons rights restored upon completion of an SIS, upon completion of the ten-year period, or upon receiving a pardon. He thought the problem was that state law says that a person can be charged with misconduct involving a weapon, but showing the SIS, ten-year passage, or pardon is an affirmative defense. The defendant has to come forward and prove affirmatively; the standard of proof is lower, but still must be raised by the defendant and overcome by the state. On the other hand, the federal law does not recognize the affirmative defense. Therefore the problem is that the federal government says that unless there is a complete parallel between the state and federal systems, the state law cannot recognize any type of exception. The exception is an affirmative defense under state law but not recognized under the federal system. As a result, there have been numerous people in

Alaska who have been unable to get weapons rights restored because the interpretation even by the state attorney general is that federal law precludes the ownership of weapons and does not recognize the affirmative defense.

Mr. Satterberg believed that the current revision was a good and necessary one. He stated concerns that it might not make it through the legislative process. He thought people who had made previous mistakes but have rehabilitated should have rights. He urged passage to make the people law-abiding citizens. He asserted that the effect in rural areas was serious.

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Representative Gara encouraged him to keep advocating for the bill.

Co-Chair Stoltze referred to similar legislation in the Senate.

Mr. Satterberg questioned those in DOL who believe that there would be problems prosecuting the cases. He thought that the government had the burden of proving guilt beyond a reasonable doubt.

C. E. TANNER, ANCHORAGE (via teleconference), spoke in support of HB 408 and HB 381. He relayed his experience as a 40-year resident of Alaska. He noted an earlier conviction for a crime; upon release he applied for and received a federal firearms relief from disability, which restored all of his rights to firearms. After ten years, the concealed-weapon legislation came along. He applied and received a concealed-carry permit, with subsequent renewals over the years until last year. The Department of Public Safety denied renewal of the permit based on the confusion in AS 11.61.200. He felt that he was being discriminated against and should receive the renewal.

MIKE MILLIGAN, KODIAK (via teleconference), testified against HB 381. He relayed experience using guns for self-protection from bears. He referred to the Second Amendment, which begins with a well-regulated militia. He opined that guns were too often used to solve problems.

Mr. Milligan explained that he personally had been threatened with deadly force. He thought more systemic

questions needed to be asked. He believed taking a human life was very serious. He reviewed history in the West and spoke of a town that thrived after passing a no-gun ordinance. He did not think all guns were bad; they have a place in the defense of property, but he cautioned against using guns to solve all problems.

[10:01:24 AM](#)

ROD ARNO, EXECUTIVE DIRECTOR, ALASKA OUTDOOR COUNCIL, PALMER, testified in support of both HB 381 and HB 408. He detailed that the Alaska Outdoor Council represents over 10,000 Alaskans and is a state affiliate with the NRA. He related that the organization supports anything that will allow members to carry a concealed weapon or firearm for personal protection. He thought food security might become an issue.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW (via teleconference), testified regarding HB 408. She stated that the department was concerned that bringing Alaska law into conformance with the requirements of the U.S. Supreme Court would make it difficult to prosecute people charged with carrying a concealed weapon as a felon. She assured the committee that she understood the situation of law-abiding citizens.

Representative Salmon asked when the ten-year waiting period would start and what proof would be required to show that the time period was over.

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Ms. Carpeneti replied that the statute stipulates ten years from the date of defendant's unconditional discharge; ten years would have to elapse from when the person finishes probation or parole. She assumed a statement could be obtained from a probation parole officer to establish the fact.

Representative Salmon queried the proof required for a person to restore their rights. Ms. Carpeneti responded that a statement would be required showing that the period of probation or parole ended on a certain date.

Representative Gara had technical questions related to HB 408. He pointed to Section 2, which appeared to repeal three statutes; he thought at least one was something that would not be a crime any more. He stated concerns. He asked what would be repealed related to AS 11.61.200(a)(12) and why. Ms. Carpeneti responded that HB 408 would repeal a prohibition against a person knowingly possessing a firearm that is concealed on their person after having been convicted of a felony (or conduct that would be a felony for an adjudicated delinquent). She added that it would still be against the law under AS 11.61.200(a)(1) to possess a firearm capable of being concealed.

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Representative Gara asked whether the rights of people other than felons-in-possession could be hampered. Ms. Carpeneti replied that DOL was concerned about the provision. She stated that the department was neutral on the bill but has concerns about the effect of the bill, including the one that was being discussed.

Representative Gara asked which crime the state would not be able to prosecute if AS 11.61.200(a)(12) were repealed. Ms. Carpeneti responded that the state would not be able to prosecute a person carrying a concealed weapon after having been convicted of a felony (or adjudicated delinquent) under the particular provision, but could still prosecute under AS 11.61.200(a)(1), which covers possessing a firearm capable of being concealed.

Representative Gara questioned whether anything was being lost. He clarified that a person could not be prosecuted for carrying concealed, but could be prosecuted for something capable of being concealed. Ms. Carpeneti agreed that the person could be prosecuted under AS 11.61.200(a)(1). She added that HB 408 would provide that AS 11.61.200(a)(1) would not apply to certain persons, including those with an SIS, a pardon, or those for whom ten years have elapsed since an unconditional release.

Representative Gara queried the next provision that he believed would no longer apply, AS 11.61.200(f). He asked whether the section was a crime provision that HB 408 would eliminate. Ms. Carpeneti replied no; AS 11.61.200(f) would provide that for purposes of AS 11.61.200(a)(12); it would define what is meant by "concealed."

10:23:15 AM

Representative Gara asked whether the department had concerns about repealing AS 11.61.200(f). Ms. Carpeneti replied that the section describes what is concealed; she stated that if AS 11.61.200(a)(12) was going to be repealed, subsection (f) should be repealed as well, since it applies to offenses under subsection (a)(12).

Representative Gara queried the third subsection that would be repealed, AS 11.61.200(g). Ms. Carpeneti replied that AS 11.61.200(g) would have the same affirmative defense to carrying concealed as described in AS 11.61.200(a)(12): if a person has an SIS, a pardon, or if ten years has elapsed, as well as having been in their own dwelling or engaged in lawful hunting or another activity that necessarily involves carrying a weapon for personal protection. Repealing AS 11.61.200(a)(12) would allow a felon to carry a concealed weapon even if they are not on their own property or engaged in hunting, fishing, or trapping.

Representative Gara summarized that current law stipulated that after ten years a person can have a firearm for limited purposes, such as in their own dwelling or for hunting; under HB 408, after ten years a person could carry concealed. Ms. Carpeneti agreed.

Representative Gara did not know that currently a gun was allowed for home and field use.

10:25:25 AM

JANE PIERSON, STAFF, REPRESENTATIVE JAY RAMRAS, explained that a person did not have the right because of federal law. Ms. Carpeneti agreed that federal law was the problem. The department was concerned that changing a state law to accommodate a federal law that does not make sense in relation to Alaska law would make it difficult for the prosecution to prove beyond a reasonable doubt for other cases of a felon carrying concealed. The department understood the situation of people like Mr. Patterson, but had concerns.

Representative Gara asked for more information. Ms. Carpeneti responded that the concern was that the prosecution would have to disprove beyond a reasonable

doubt for current affirmative defenses (facts in the hands of a person charged with a crime). She gave a hypothetical example of a person pardoned in another state twenty years prior; the department would have to go find the person who was pardoned. Under current law, it is the duty of the person charged to show proof of pardon or SIS. She emphasized that the information is difficult to find.

Representative Doogan asked why the fiscal note was zero if the issue would be a problem for the department. Ms. Carpeneti did not know the answer and offered to get more information.

Co-Chair Stoltze pointed out that the fiscal note said that enactment of the bill was not anticipated to fiscally impact DOL.

Representative Doogan thought there was a problem with her assertion that the department would have more work. Ms. Carpeneti agreed.

[10:29:43 AM](#)

Representative Salmon clarified the meaning of "SIS" as a suspended imposition of sentence.

Representative Joule referenced Ms. Carpeneti's statement that the bill was a worthy effort but she was not sure it was the right approach. He asked what the right approach would be. He queried her proposed solution to the concerns. Ms. Carpeneti responded that the department had not come up with a solution to the problem; it cannot change federal law or federal decision-making. The issue was caused by the U.S. Supreme Court ruling on the Caron case, which puts people in a difficult situation. The department was not sure the proposals in HB 480 would justify the concerns.

Ms. Pierson informed the committee that the bill had gone through many drafts; the proposed version was the only way the sponsor had found that could work under the law as written.

Ms. Carpeneti interjected that DOL was not sure that HB 408 would satisfy federal law. She warned that HB 408 could make the difference, but she did not think it was a sure thing.

10:33:54 AM

JAMES HOTAI WILLIAMS, VALDEZ (via teleconference), testified in support of HB 408. He thought good citizens were being held back from legally carrying a gun. He urged passage of the legislation.

Mr. Judy asserted that HB 408 was the only way to solve the problem. He emphasized that federal law took people's rights away. He thought the bill would restore rights to people who had paid their debt to society.

Ms. Pierson believed that the policy call was the restoration of rights for ex-felons who have proved they can function appropriately in society.

Representative Gara clarified that HB 408 would not restore rights to a person who had committed a personal crime with a weapon. Ms. Pierson agreed that the measure would not restore the rights of a person who committed a crime against another person.

Representative Gara added that the crimes covered were the subsection AS 11.41 crimes, including murder, rape, and violent assault. Ms. Pierson agreed.

Co-Chair Stoltze closed public testimony.

10:38:50 AM

Co-Chair Hawker MOVED to report CSHB 408(JUD) out of Committee with individual recommendations and the accompanying fiscal notes.

CSHB 408(JUD) was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal notes: FN1 (LAW), FN2 (DPS).

Co-Chair Stoltze turned the committee's attention to HB 381.

Representative Neuman referred to an earlier question by Representative Gara. He explained that the issue was the ability to use deadly force before a crime happens. The bill (page 1, lines 8 to 12) would expand current statute to describe where a person has a right to be. A person would have the right to defense using deadly force anywhere

they have a legal right to be, not just in their home. He emphasized that the offense would still have to be justifiable. He pointed out that there are other ways to use deadly force besides using a gun.

Representative Gara referred to the case with the Mat-Su minister. He recalled that the minister shot the robber in the back as the robber ran away; he did not want to justify that.

Representative Doogan also wanted the question answered.

Representative Neuman agreed that the person was shot in the back, but added that the person running had a gun in his pocket and could have shot back. The defendant had to prove in court that the deadly-force defense was justifiable; the court found that it was. He argued that a person has the right to defense wherever they have a legal right to be. He questioned allowing the rights of a criminal to overrule the rights of an honest person.

Representative Gara asked whether HB 381 would have an impact on a case like the one being discussed in which a person shot a fleeing robber in the back. Representative Neuman replied that the bill would not affect the case because the court had to determine whether he was justified in using deadly force. He maintained that the bill addressed the duty to retreat.

[10:45:17 AM](#)

Representative Kelly opined that HB 381 would not change the discussed case. He believed the bill would say a person on their own property would not have to run. He spoke in support of the legislation.

Representative Doogan wondered where a person would not have a right to be.

Representative Gara pointed out that laws already in place that do not allow shooting another person are aimed at protecting the victim, but also preventing someone from shooting another person for no good reason.

Co-Chair Stoltze suggested that the case being discussed might not be the best example.

Representative Neuman acknowledged that the case was complex. He addressed Representative Doogan's question about where a person does not have a right to be. He gave the example of a person being in a yard that was not theirs.

Representative Kelly noted that people had not yet caught up with the changes in the CS and asserted that the bill had been changed substantially. He pointed out that HB 381 was only about not having a duty to run from a place where a person has a legal right to be.

Ms. Carpeneti reported that the department was concerned that HB 381 would increase violence in Alaska. Currently, the duty to retreat is fairly limited; a person does not necessarily have a duty to retreat, especially if they are home, in a place of work, or a guest in another person's home. In addition, self-defense is a defense under Alaska law; the state is obliged to prove beyond a reasonable doubt that a person knew they could retreat in complete safety.

[10:50:36 AM](#)

Ms. Carpeneti emphasized that currently a person has no duty to retreat if they are being attacked by a rapist, for example, unless they can do so in complete safety. She reiterated that DOL is concerned that the bill would help eliminate the duty to retreat in Alaska, since a person has a legal right to be anywhere, except where they are trespassing on another person's property.

Co-Chair Stoltze reported that communication he had received regarding the legislation was not about the desire to use deadly force but about the long legal process a person has to go through to justify the use of force. Ms. Carpeneti responded that prosecutors would still have to prove beyond a reasonable doubt that the victim knew they could retreat in complete safety. She asserted that the problem with changing a law across the board was that it would also apply to criminals and complex situations such as a gang shoot-out in a public parking lot where everyone involved is where they have a right to be.

Representative Gara queried whether the only circumstances addressed by the bill were cases related to self-defense against death, serious physical injury, kidnapping, sexual

assault, sexual abuse of a minor, or robbery (listed in AS 11.81.335(a)). Ms. Carpeneti replied that the duty to retreat applies to situations in which a person would otherwise be justified to use deadly force, but they can retreat in complete safety. A person first has to be justified to use force at all in self-defense; a person can use deadly force to defend self or others against the listed circumstances when the duty to retreat applies.

Representative Gara summarized that the places where a person could potentially be justified were the seven situations listed; otherwise, the duty to retreat applies. Ms. Carpeneti agreed.

Representative Gara asked whether currently a person has a duty to retreat when it is clear they can do so safely.

[10:55:36 AM](#)

Ms. Carpeneti replied that it must be clear and the person must know that they can retreat safely; if the person is confused or does not realize that they can retreat, they do not have to retreat before using deadly force.

Representative Gara offered both sides of the argument in order to get further clarification: On the one hand, if it is clear that a person can retreat safely, the law does not want to provide the option of shooting someone. Ms. Carpeneti agreed.

Representative Gara asked someone else to provide an example of the other side of the argument.

Representative Neuman disagreed with Ms. Carpeneti's statement that a person can always be justified in using deadly force. He opined that during certain activities, deadly force cannot be used, such as when participating in a crime, felony, or criminal objective, or when fleeing or in an attack with gang-related robberies; AS 11.81.33 stipulates that a person cannot use deadly force in cases including participation in a felony transaction, acting alone or with others in revenge or retaliation, and so on. He emphasized that HB 381 is not about being in a gang-related fight or participating in criminal activities.

Representative Neuman provided an example that raises the question of whether a defendant would be second-guessed in

court. A person has to know that they could not retreat in complete safety and has to make the decision in a split second. He stressed that people are finding themselves in court over the issue of trying to defend with deadly force.

Representative Doogan queried the perimeters of the proposed legislation. He wondered whether there were circumstances in which a person would not be subject to the law because they were in a place where they did not have the right to be. Ms. Carpeneti answered that a person does not have a right to be on someone else's property. A person who was trespassing would not be justified in using deadly force against the property owner and then claiming that they did not have to retreat.

Representative Doogan asked whether there were any other circumstances in which the description would apply. Ms. Carpeneti replied that the main one was being on someone else's property; otherwise a person could be anywhere.

Representative Doogan provided a scenario: A person goes to a courthouse where it is posted that a person cannot carry a weapon, there is a shoot-out, and the person pulls out their weapon and shoots someone else. He asked whether the person in the scenario was in a place where they had a right to be.

[11:00:56 AM](#)

Ms. Carpeneti opined that the person has a right to be in the courtroom, but the question would be whether the person has the right to have a gun there.

Representative Doogan asked whether a person in the hypothetical case might be prosecuted for having a firearm in a place they should not have had it, but not for shooting someone with the firearm. Ms. Carpeneti responded that it would depend on the circumstances, but she agreed it was a possibility.

Co-Chair Stoltze asked how likely the possibility was. Ms. Carpeneti answered that none of the situations that had been described were very likely.

Ms. Carpeneti responded to Representative Neuman's statement about criminal acts. She opined that the problem in a gang-related incident was that past investigations

have shown that everyone claims that the other side shot first, leaving both sides in a position to say that they had a right to be there and did not shoot first and could not be charged. She pointed out that it is not always clear who is the criminal and who is not.

Co-Chair Stoltze recalled other predictions and grave concerns related to past firearms legislation that had not come to pass. He did not want to get mired in unlikely scenarios.

Representative Gara expressed concern about giving someone the ability to shoot someone they do not need to shoot, while still maintaining the right to self-defense. He described the opposite argument to the one he had proposed earlier: AS 11.31.335(a) stipulates that a person can only use deadly force if they can prove it was necessary for self-defense in one of the seven types of circumstances listed. He asked whether in advocating for the bill he could say the state was not giving someone the right to shoot someone else in the back because they have to prove that the shooting was necessary for self-defense.

[11:05:01 AM](#)

Ms. Carpeneti replied that the person who did the shooting would not have to prove anything, because in Alaska, self-defense is a defense; the prosecution would have to disprove self-defense beyond a reasonable doubt. In other jurisdictions, the defense of self-defense is an affirmative defense; a person charged with a crime has to prove by a preponderance of evidence.

Representative Gara was not worried about the burden-of-proof issue. He asked whether HB 381 would make it allowable to shoot someone only if the shooting was necessary for self-defense. Ms. Carpeneti answered that under HB 381, a person would be authorized to use deadly force when justified under the statutes that authorize the use of force in self-defense, even though the person knew they could retreat in complete safety. In the example of a person coming into a committee room and showing a weapon, she did not think the people sitting in the room could know whether they could retreat in complete safety, so there would not be a duty to retreat. On the other hand, if a person is a couple blocks away from an incident and knows they can retreat by turning around or going into a building

and call the police in complete safety to self and others, the person should retreat and should call the police, even though they could be justified in using deadly force.

Representative Gara thought the duty-to-retreat part could be irrelevant; setting the burden-of-proof issue aside, the state would have to show that the action was necessary for self-defense, or the person would be convicted. Ms. Carpeneti responded that the state would have to prove that the use of force in defense of self and others was reasonable; the person has to believe they had to use force, and the belief has to be reasonable. At that point, deadly force could be used to avoid the things described before (death, serious physical injury, kidnapping, and so on). Then, if the person can retreat in complete safety to self and others and the person knows they can retreat, the law requires retreat before using deadly force.

Representative Gara did not understand where the duty-to-retreat issue would ever come into play under current law; if the requirement is only using it when necessary for self-defense, it would not matter whether there was a law saying a person should retreat when it is safe.

[11:09:16 AM](#)

Ms. Carpeneti provided an example: In the middle of the night, a person is asleep in bed. Someone outside runs out of gas and does not have a cell phone and knocks on the door of the sleeping person to use the telephone to call for help. The person inside gets their handgun (since it is the middle of the night) and goes to the door with the gun in hand. The person on the other side of the door sees the gun, and is afraid that the person with the gun intends harm, and the fear is reasonable. The person outside would then be justified in using deadly force rather than turning around and running in the other direction. The person outside is in a place where they have a right to be, has a reasonable and personal fear of the person inside with the gun, and would not have a duty to retreat. She thought the example turned the tables on the example of the person inside the house having the right to use deadly force.

Co-Chair Stoltze noted the importance of having cell phones in cars.

[11:11:52 AM](#)

Co-Chair Stoltze closed public testimony. He asked Mr. Judy to testify.

Representative Doogan questioned why Mr. Judy was not testifying as a member of public. Co-Chair Stoltze explained that he was being called as an expert witness.

Mr. Judy addressed the question of whether it would only be allowable to shoot someone when necessary. He answered "absolutely." He asserted that HB 381 had nothing to do with justification; the basic principle still remains that in self-defense, a person may only use deadly force upon another when and to the extent that they reasonably believe the use of deadly force is necessary for self-defense. He added that the use of deadly force is limited for self-defense in the listed circumstances (death, serious physical injury, kidnapping, sexual assault, or robbery). In addition, the no duty to retreat only relates to deadly force; AS 11.81.335(a) is the justification. A person may not use deadly force [unless] the person is in a place they have a legal right to be. He stated that the perimeters of "a legal right to be" are related to no trespassing; a person committing a crime has no right to be in that place. He did not think HB 381 would impact the issue. He stressed that the bill was very narrow and simple.

[11:15:16 AM](#)

Representative Gara requested comment from DOL related to the gang issue.

LT. RODNEY DIAL, ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY (via teleconference), commented that the department was neutral on the bill.

Co-Chair Hawker spoke to the fiscal note. Based on what he had heard in testimony, he had concerns about the immediate employment of two full-time employees at the Department of Law at a cost of \$400,000. He felt that the fiscal note should be indeterminate.

Representative Kelly thought the law itself would be a deterrent to crime and argued that there would be less need for law enforcement to get involved.

Representative Doogan stated that he was willing to accept an indeterminate fiscal note but not a zero note.

Representative Gara did not think there was a good argument about which way the fiscal note should go. He opined that some people could read the law as having a right to shoot people. He did not think criminals would read the law before assaulting somebody and did not think it would deter crime.

Representative Gara stated concerns about what DOL had said about gang violence, which he viewed as a substantial and growing problem. He maintained that the traditional gang defense was "they shot first." He was less concerned about someone shooting someone else in the back, which he did not think people had a right to do in general; he wanted that to be made clear if HB 381 passed. Regarding the gang issue, he wondered whether an exception could be written into the law so that a person involved in gang violence could not claim that they had a right to be there. He understood that it was hard to define "gang." He wanted to exempt people who are part of a gang of a convenient excuse to kill.

[11:21:47 AM](#)

Co-Chair Hawker thought the issue of gang violence had been addressed in AS 11.81.330, the justification for the use of non-deadly force, a prerequisite for a justification for deadly force. He argued that the statute clearly stipulated that a person is justified in using non-deadly force on another unless the person is acting alone or with others for revenge, retaliation, or response to actual or perceived conduct by a rival, perceived rival, or member of a perceived rival group. He did not care if gang members shot each other, but he cared about innocent citizens. He felt that AS 11.81.330(c) would specifically protect the state from issues raised by Representative Gara.

Representative Kelly agreed.

Representative Neuman added that the bill would not change justification laws, which are still in statute. He emphasized that a person may not use deadly force if it is not necessary. He pointed out that HB 381 would clarify current statute related to where a person has a legal right

to be. He opined that criminals will be criminals and honest people are not criminals.

Co-Chair Hawker requested the committee aide to redo the fiscal note to make it an indeterminate fiscal note for DOL.

Representative Gara commented that Co-Chair Hawker had addressed his concerns about the gang issue. He wanted DOL's opinion on the issue.

Co-Chair Stoltze thought the department could comment at another time. He thought some of the issues would be dealt with on the floor.

[11:26:40 AM](#)

Vice-Chair Thomas relayed personal experience and noted that different people have different "breaking points" in various kinds of confrontations. He had learned not to retreat in confrontations. The military had also taught him not to retreat. He pointed out that veterans are often in confrontations and do not retreat. He referred to more frequent shootings in Anchorage and his decision to consider obtaining a concealed handgun for self-defense. He agreed with Co-Chair Hawker about the gangs: let them shoot each other. He supported passing the legislation out of committee.

Representative Doogan stated that he could not support HB 381 because he felt the bill would simply remove the duty to retreat and create more violence. Since people had a right to be almost anywhere, a person in a confrontation would no longer be required to retreat if they have the opportunity to do so. He believed more confrontations, violence, and more shootings would be inevitable. He felt that basically everyone would have the opportunity to use force; some would use it well and some would not.

[11:32:16 AM](#)

Representative Salmon stated that he supported the bill. He reported that he had been trying to apply the measure to rural areas. He thought there were unclear situations in which someone was shooting and pointed out that there is nowhere to retreat in rural areas because of the lack of law enforcement. He noted that it could take two or three

days for a state trooper to arrive. He supported the bill for rural areas. He understood that urban areas had different issues.

Representative Gara argued that no law would stop gang members from shooting one another. He pointed out that Ms. Carpeneti's point was not that they would stop shooting each other, but that the state would not be able to prosecute gang members. He believed the question was whether the state would be able to prosecute and send a murderer to jail.

Representative Foster stated support for the legislation, noting that he had gone back and forth on the issue. He felt that victims or potential victims and not criminals should be given the benefit of the doubt in situations in which a person has to make a split-second decision.

[11:35:44 AM](#)

Co-Chair Hawker bill emphasized that the bill would not change any of the issues regarding justification of the use of deadly force.

Co-Chair Hawker MOVED to report CSHB 381(JUD) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 381(JUD) was REPORTED out of Committee with a "do pass" recommendation and with attached new fiscal note by the House Finance Committee for the Department of Law and previously published fiscal note: FN1 (DPS).

#

ADJOURNMENT

The meeting was adjourned at 11:37 AM.