

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

April 12, 2010

8:30 a.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Dennis Egan  
Senator Lesil McGuire  
Senator John Coghill

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 408(JUD)  
"An Act relating to misconduct involving weapons."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 408

SHORT TITLE: MISCONDUCT INVOLVING WEAPONS

SPONSOR(s): JUDICIARY

02/26/10	(H)	READ THE FIRST TIME - REFERRALS
02/26/10	(H)	JUD, FIN
03/12/10	(H)	JUD AT 1:00 PM CAPITOL 120
03/12/10	(H)	Heard & Held
03/12/10	(H)	MINUTE(JUD)
03/24/10	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/10	(H)	<Bill Hearing Rescheduled to 03/25/10>
03/25/10	(H)	JUD AT 1:00 PM CAPITOL 120
03/25/10	(H)	Moved CSHB 408(JUD) Out of Committee
03/25/10	(H)	MINUTE(JUD)
03/26/10	(H)	JUD RPT CS(JUD) 2DP 2NR
03/26/10	(H)	DP: LYNN, RAMRAS
03/26/10	(H)	NR: HERRON, GATTO
04/08/10	(H)	FIN AT 9:00 AM HOUSE FINANCE 519
04/08/10	(H)	Moved CSHB 408(JUD) Out of Committee
04/08/10	(H)	MINUTE(FIN)
04/09/10	(H)	FIN RPT CS(JUD) 9DP

04/09/10 (H) DP: THOMAS, GARA, DOOGAN, JOULE,  
N.FOSTER, KELLY, SALMON, STOLTZE,  
HAWKER  
04/10/10 (H) TRANSMITTED TO (S)  
04/10/10 (H) VERSION: CSHB 408(JUD)  
04/11/10 (S) READ THE FIRST TIME - REFERRALS  
04/11/10 (S) JUD  
04/12/10 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

REPRESENTATIVE JAY RAMRAS  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 408.

JANE PIERSON, Staff  
to Representative Jay Ramras  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information related to HB 408.

DONALD M. CLARK, representing himself

**POSITION STATEMENT:** Testified in support of HB 408.

BRIAN JUDY, Alaska state liaison  
National Rifle Association (NRA)  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 408.

C.E. TANNER, representing self

**POSITION STATEMENT:** Testified in support of HB 408.

RON STERLING, representing himself

**POSITION STATEMENT:** Testified in support of HB 408.

ERIC STANLEY, representing himself

**POSITION STATEMENT:** Testified in support of HB 408.

WILLIAM SATTERBERG, representing himself

**POSITION STATEMENT:** Testified in support of HB 408.

RICHARD PATTERSON, representing himself

**POSITION STATEMENT:** Testified in support of HB 408.

JAMES ADAMS, representing himself

**POSITION STATEMENT:** Testified in support of HB 408.

SUE MCLEAN, Director  
Criminal Division  
Department of Law (DOL)  
Anchorage, AK

**POSITION STATEMENT:** Raised concerns about HB 408.

**ACTION NARRATIVE**

[8:30:18 AM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 8:30 a.m. Present at the call to order were Senators Coghill, Wielechowski, Egan, and French.

**HB 408-MISCONDUCT INVOLVING WEAPONS**

[8:30:29 AM](#)

**CHAIR FRENCH** announced the consideration of HB 408. [CSHB 408(JUD) was before the committee.]

**REPRESENTATIVE JAY RAMRAS**, sponsor of HB 408, related that in committee and on the House floor HB 408 has been informally retitled "a restoration of rights bill." He introduced the bill speaking to the following sponsor statement.

Under Alaska law, an individual who has been convicted of a felony can carry handguns and have their right to bear arms restored by any of three occurrences: 1) a pardon, 2) the underlying conviction having been set aside under AS 12.55.085, or 3) by the passage of ten years time from an unconditional discharge.

However, the U.S. Supreme Court in the case of Caron v. U.S., 524 U.S. 308 (1998), ruled that if a person who has been previously convicted of a felony is prohibited from possessing firearms, in any way, under state law, then they are prohibited from possessing firearms under federal law.

While under state law a previously convicted ex-felon's right to possession of firearms is fully restored, there are still limitations on carrying concealed weapons. Ex-felons can carry concealed on their own property, while engaged in lawful hunting, fishing, or trapping, or while engaged in other lawful

activities that necessarily involves the carrying of a weapon for personal protection.

However, the ATF and the FBI are interpreting Alaska's statute to be a restriction upon possession. Due to this interpretation, Alaskans who under state law are allowed to possess firearms are being threatened with prosecution for serious federal offenses.

This bill addresses the language in AS 11.61.200, Misconduct Involving Weapons in the Third Degree. AS 11.61.200(a)(12) bars all people convicted of felonies from carrying concealed weapons, while AS 11.61.200(g) sets out exemptions to (a)(12)'s blanket ban.

The Alaska State Legislature has made its own policy decision about how to handle the gun rights of ex-felons. HB 408 is one of the many bills that have been drafted in this legislation session to bring this issue back before the Alaska State Legislature for consideration.

CHAIR FRENCH opened public testimony.

[8:38:26 AM](#)

DONALD M. CLARK, representing himself, said he never had a blemish on his record until about ten years ago when he made a poor decision and agreed to grow a few plants for his lady friend to support her habit. His attorney explained that if he pled guilty he would receive a fine, get two years probation, and a suspended imposition of sentence. After completing the conditions set out by the court he expected to get his rights back, but that didn't happen. A year or so later when he tried to purchase a shotgun the federal government turned him down. This was in spite of the fact that the judge and prosecuting attorney assured him that his rights had been restored. After exhausting his options he retained an attorney to try to right the system for himself and others caught in the same dilemma. HB 408 would correct the problem.

[8:40:28 AM](#)

BRIAN JUDY, Alaska state liaison, National Rifle Association (NRA), said HB 408 is not about giving firearms to felons because the state's policy already is to restore firearm rights to former offenders upon release from incarceration. The right to possess handguns is restored if the person receives a pardon or a "set aside" or 10 years after unconditional discharge. The

individual can now openly carry handguns anywhere in the state and they can carry concealed at home, on their property, or if they are engaged in a lawful outdoor activity. This restores essentially 95 percent of their rights. But because the state doesn't go the extra step and restore 100 percent of the rights, these individuals have zero rights for the purpose of the federal law and they can be prosecuted for possession of a firearm. HB 408 takes that extra step and facilitates the implementation of the existing state policy.

HB 408 removes the slight restriction on concealed carry and it changes the affirmative defense in AS 11.61.200 to an exception. Without these small technical changes, the federal government extinguishes all the rights of these individuals who have already paid their debt to society.

[8:43:44 AM](#)

C.E. TANNER, representing self, said that 30 years ago he committed a felony and spent some time under federal supervision, but for the past 25 years he's lived an exemplary life. Before he retired three years ago, he was a real estate broker and general contractor. Shortly after he was released from federal supervision, he applied for and received a federal relief of disability for firearms. After the Legislature passed the concealed carry permit legislation, he applied for and received a concealed carry permit. He renewed the permit several times and then last year the Alaska Department of Public Safety (DPS) interpreted the statute differently and refused to renew his permit. This is discriminatory and he therefore supports passage of HB 408.

[8:46:59 AM](#)

RON STERLING, representing himself, said he committed a drug offense at age 18 and was sentenced to probation and four weekends in jail. Although he paid his debt, he is still paying 40 years later because of the different standards between state and federal law. The offense was expunged from his record and a background check by the Alaska State Troopers indicated that he had no criminal record with the state. Even so, when he tried to buy firearms for target shooting he was denied. He thanked the committee for hopefully correcting this wrong.

[8:49:33 AM](#)

ERIC STANLEY, representing himself, said that over ten years ago when he was in his late teens and living on the Aleutian Chain he made a poor decision to receive stolen property. The result is that he went to jail directly after he graduated from high

school. It was a life-changing experience. He served 30-45 days after which he completed three years probation and received a suspended imposition of sentence. He now has a teenage daughter and would like to take her hunting and target shooting. He'd also like to carry a firearm for protection from bears when he's fishing.

[8:55:47 AM](#)

SENATOR WIELECHOWSKI asked if a convicted felon could carry a rifle or shotgun.

JANE PIERSON, Staff to Representative Jay Ramras, said no because of the all-or-nothing provision in federal law.

Senator McGuire joined the committee.

WILLIAM R. SATTERBERG, representing himself, said he is strongly in favor of HB 408. He has practiced law for about 34 years and a major portion of the work he does in the area of criminal defense, both federal and state. He explained that for years the state has had suspended imposition of sentence (SIS), which means that an offender who complies with the requirements that the court has imposed can have their civil rights restored. Up until last April these individuals were told that this included getting their gun rights restored. At that time the Attorney General's Office changed position and said that in light of the Caron decision and the disjoint between state and federal law, the state cannot restore weapon rights. Doing so would allow a person to violate federal law. He provided an example.

[8:58:42 AM](#)

MR. SATTERBERG opined that this is a situation where the state must come into conformity with federal law because the federal government is not going to make an exception for Alaska. If HB 408 were to pass, the state would be in complete parallel with the federal government and these individuals would be able to have weapon rights. The fact that there's an affirmative defense effectively denies thousands of Alaskans the right to own weapons after they have fulfilled their debt to society. He urged the committee to pass HB 408.

[9:01:14 AM](#)

RICHARD PATTERSON, representing himself, spoke in support of HB 408. He said he is a rescue pilot who has saved thousands of lives in his long career. He related that about 20 years ago he made an error, pled no contest, and completed four years probation. At the time he discussed with counsel the job

ramifications of losing his firearm rights and he researched state documents. At that time the clemency handbook clearly stated that he did not need a pardon and the state would gladly restore his rights to carry long guns. As time went on he learned that things weren't as they originally seemed. In 2006 he applied for and received a full and unconditional pardon from the governor. It specifically states that its purpose is to restore his rights to possess and use handguns, but that hasn't been the case. He urged the committee to pass HB 408 and make AS 11.61.200 function as intended.

[9:07:55 AM](#)

JAMES ADAMS, representing himself, related that in 1985 he entered a no contest plea on a felony offense and received 5 years probation. The judge waived the condition of not having a concealable weapon and as a special condition said that the firearms provision would be excluded provided permission was granted from the federal government. In 1986 when he started probation he applied for and received a federal firearms license. He held that license for about 15 years but in the late '90s he had to give it up.

MR. ADAMS said he's 64 years old and would like to use his training and be a gunsmith when he retires but at this point he isn't allowed to own a gun or go shooting for enjoyment. He said he fulfilled the commitment he made in his plea agreement and would like the state to fulfill its agreement with him and restore his firearms rights.

[9:12:46 AM](#)

SUE MCLEAN, Director, Criminal Division, Department of Law (DOL), said she would affirm that the foregoing testimony is an accurate depiction of the conflict between the federal and state possession of firearms laws. Because people who have a suspended imposition of sentence can't carry concealed except in their home or on their property or hunting and fishing, the FBI reads that as a complete prohibition against the possession or purchase of firearms.

CHAIR FRENCH opined that it's hard to get that result from reading Caron v. U.S.

MS. MCLEAN said that people who have had trouble with their federal gun rights are often referred to her even though she can do nothing to help because their problem is with the federal government. Nonetheless, she speaks to the FBI representative about this frequently and is always told to tell people that the

fact that they have rights under the state to possess firearms doesn't mean that they have federal rights to possess firearms.

9:15:22 AM

CHAIR FRENCH summarized that the people who testified this morning don't have a problem with state government; they have a problem with the federal government although it circles around to the fact that the federal government blames the state's laws.

MS. MCLEAN clarified that the federal government's interpretation is that AS 11.61.200(g) allows a person who has a set aside to carry a concealed weapon with exceptions. They may carry a concealed weapon only in their home, on their property, or when engaged in hunting and fishing activities and it's needed for self protection. The federal government reads that exception to the permission to carry concealed as being "a restriction on the restoration of your firearms rights." If there's any restriction in statutory law, it applies to all felons.

CHAIR FRENCH asked if there'd been a change in policy or interpretation since the administration changed in Washington DC.

MS. MCLEAN answered no. She said she understands why the sponsor is seeking the change in state law, but DOL has concerns about repealing the affirmative defense for concealed weapons. This switches the burden to the state to prove that a person does not have a right to possess a firearm. That will be a difficult burden because of the difficulty in calculating when the unconditional discharge occurs.

9:19:00 AM

CHAIR FRENCH questioned why it's difficult to pinpoint.

MS. MCLEAN said it's always a problem with people who come from other states because time served is measure differently depending on the state. For example, one state measures time served as the time a person is on probation.

CHAIR FRENCH observed that if the requirement is ten years after unconditional release, the person will have lived a blame-free life for a significant number of years before their firearm's rights are restored.

MS. MCLEAN said yes; the difficulty will be in calculating that date or knowing if they have a pardon. She reminded the

committee that the state's position is to know that it can prove every element beyond a reasonable doubt before bringing the charge. It would be difficult to look at a record and know that a person didn't have a pardon.

CHAIR FRENCH agreed it's hard to prove a negative.

MS. MCLEAN said it would be easier if this law provided the same requirement as the state's sex offender registration law. It requires the sex offender to come forward and show that they no longer have to register.

CHAIR FRENCH asked if she knows how many unconditional pardons have been granted to felons in Alaska because his understanding is that they are extremely rare in this state.

[9:21:16 AM](#)

MS. MCLEAN said the Governor's Office probably has a record but she believes that it's more than two. The problem is tracking the information from other states.

REPRESENTATIVE RAMRAS said he doesn't disagree with DOL that there's a policy call embedded in the bill, but he deferred to the many Alaskans that have testified rather than those people who might move to this state and provide an affirmative defense and assert one of the three claims: 1) a pardon, 2) the conviction having been set aside, or 3) by the passage of ten years after an unconditional release.

MS. PIERSON added that the policy call they decided on was that it should be the state's burden of proof in a criminal case.

CHAIR FRENCH announced that he would hold HB 408 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at 9:23 a.m.