

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 16, 2010

9:38 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Dennis Egan

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 381(JUD)

"An Act relating to self defense in any place where a person has a right to be."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 381

SHORT TITLE: SELF DEFENSE

SPONSOR(s): REPRESENTATIVE(s) NEUMAN

02/23/10	(H)	READ THE FIRST TIME - REFERRALS
02/23/10	(H)	JUD, FIN
03/15/10	(H)	JUD AT 1:00 PM CAPITOL 120
03/15/10	(H)	Heard & Held
03/15/10	(H)	MINUTE(JUD)
03/29/10	(H)	JUD RPT CS(JUD) NT 3DP 1DNP 2NR
03/29/10	(H)	DP: LYNN, GATTO, RAMRAS
03/29/10	(H)	DNP: HOLMES
03/29/10	(H)	NR: GRUENBERG, HERRON
03/29/10	(H)	JUD AT 1:00 PM CAPITOL 120
03/29/10	(H)	Moved CSHB 381(JUD) Out of Committee
03/29/10	(H)	MINUTE(JUD)
04/08/10	(H)	FIN AT 9:00 AM HOUSE FINANCE 519
04/08/10	(H)	Moved CSHB 381(JUD) Out of Committee
04/08/10	(H)	MINUTE(FIN)
04/09/10	(H)	FIN RPT CS(JUD) NT 6DP 1DNP 2NR

04/09/10 (H) DP: THOMAS, N.FOSTER, KELLY, SALMON,
STOLTZE, HAWKER
04/09/10 (H) DNP: DOOGAN
04/09/10 (H) NR: GARA, JOULE
04/12/10 (H) TRANSMITTED TO (S)
04/12/10 (H) VERSION: CSHB 381(JUD)
04/13/10 (S) READ THE FIRST TIME - REFERRALS
04/13/10 (S) JUD, FIN
04/15/10 (S) JUD AT 8:30 AM BUTROVICH 205
04/15/10 (S) Heard & Held
04/15/10 (S) MINUTE(JUD)

WITNESS REGISTER

JOHN STRALEY, representing himself
Sitka, AK

POSITION STATEMENT: Testified in opposition to HB 381.

BRIAN JUDY, Alaska Liaison
National Rifle Association (NRA)

POSITION STATEMENT: Testified in support of HB 381.

CHUCK KOPP, representing himself

POSITION STATEMENT: Testified in strong support of HB 381, but suggested caution.

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

POSITION STATEMENT: Testified that DOL is opposed to HB 381.

ACTION NARRATIVE

[9:38:35 AM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 9:38 a.m. Senators McGuire, Wielechowski, Coghill, and French were present at the call to order.

HB 381-SELF DEFENSE

[9:38:47 AM](#)

CHAIR FRENCH announced the consideration of HB 318. [CSHB 381(JUD) was before the committee.] It was heard previously at which time testimony was taken from the sponsor and DOL and one public member.

JOHN STRALEY, representing himself, informed the committee that he has been a criminal defense investigator since 1984 and the author of several crime novels. Based on that experience he is speaking in opposition to HB 381. The current law works and protects citizens. It asks that people pause before using deadly force in potentially violent confrontations, whereas the proposed change is an invitation to gun fighting. He related that he has sat with dozens of criminal defendants after a homicide and although the circumstances are all different, a unifying theme is that almost all felt justified in the instant that they took a life. But later, and often just seconds later, these criminal defendants saw that their judgment was flawed or clouded and wrong. We don't need to send citizens the message that conflict should be quickly resolved by violence and that's what HB 381 does, he said.

9:43:27 AM

MR. STRALEY observed that the language in the bill sounds reasonable and like it's just a small change, but it's like changing a compass course a few degrees. Over time it will have a wide impact on Alaskan life. He related that his and other crime stories are about citizens bypassing the flawed and burdensome justice system to mete out moral vengeance. His stories clearly differentiate between the good guys and the bad guys and the good guys always win. But this bill isn't crafting a novel. Crafting legislation is a slow and deliberative process that considers the effects and consequences.

MR. STRALEY expressed his strong belief that this small change will increase gun violence and ironically it will offer the bad guys one less hurdle to jump for killings that they might want to commit. HB 381 doesn't require somebody to retreat or pause to consider the consequences. He suggested that if the committee isn't inclined to listen to him then it should listen to the Department of Law, and people like Rick Svobodny who have written to oppose this bill. HB 381 is well intentioned, but it sends the wrong message and the results will have deadly consequences, he concluded.

9:48:47 AM

BRIAN JUDY, Alaska Liaison, National Rifle Association (NRA), described HB 381 as important legislation that provides protection and assurance that a person doesn't have to retreat when he/she is lawfully in a place and feels threatened. He pointed out that existing Alaska law already specifies that a person has no duty to retreat if he/she is "on premises which the person owns or where the person resides or in a building

where the person works." The intent of HB 381 is to extend that to any place where a person has a legal right to be.

Under the proposed language of HB 381, a person who is dragged into an alley by a rapist or a person who is dragged into a car by a kidnapper has no duty to retreat and they may fight back with force. The NRA views it as common sense to be able to stand one's ground and meet force with force, he said.

MR. JUDY reiterated that law-abiding citizens shouldn't fear criminal prosecution when they stand their ground and defend themselves when in a place that they have a legal right to be. On behalf of the NRA he urged support for HB 381.

[9:55:27 AM](#)

CHUCK KOPP, representing himself, said he is speaking in strong support of the intent of HB 381 to help protect innocent citizens, but he has reservations about the unintended consequences as currently written.

MR. KOPP pointed out that existing law appropriately identifies in Title 11 that the use of deadly force is justified when used to defend against murder, felony assault, kidnapping, sexual assault, and sexual abuse of a minor when perpetrated in your home, place of work and anyplace you are protecting a family member. However, the law also recognizes that most uncomfortable aggressive or violent encounters don't rise to this level. Most occur in public places and there's a fundamental assumption in the law that people show deference and yield to one another in these shared access areas.

MR. KOPP said that while the sponsor statement says that this legislation makes it clear that it's the criminals who have a duty to retreat, the reality is that when violence erupts the ensuing investigation has difficulty determining who the criminal is in the matter.

MR. KOPP offered his belief that the current law establishes a correct balance between the right to defend oneself and the duty to yield. He cautioned that HB 381 may have the unintended impact of tipping the balance to an overzealous use of deadly force in self defense. He highlighted that the Department of Law drafted an amendment that addresses his concerns and carries forward the intent of the sponsor.

[10:00:41 AM](#)

SENATOR WIELECHOWSKI asked if he is expressing support for the proposed amendment that is on members' desks.

MR KOPP answered yes.

SENATOR MCGUIRE asked to hear from the Department of Law.

SUE MCLEAN, Director, Criminal Division, Department of Law (DOL), stated that while the proposed amendment may be a compromise, DOL is still opposed to HB 381. Mr. Judy suggested that the purpose of this law is to relieve a person of the fear of prosecution for defending him or herself, but what hasn't been said is that there is an extraordinary and unacceptable problem with prosecuting people after they have defended themselves. When a homicide or use of deadly force incident is being investigated, the state is aware that it has the burden to prove that a person did not act in self defense otherwise it will face a judgment of acquittal. This means that a case isn't filed when it appears that there's reasonable doubt.

[10:03:48 AM](#)

MS. MCLEAN provided the following illustrations where DOL declined to prosecute because it saw self defense:

- Mr. A was in a public park and came on to a woman. She called her boyfriend on her cell phone to report that a man was harassing her. The boyfriend possibly heard that the man was threatening his girlfriend. The boyfriend rushes to the park and approaches Mr. A with a baseball bat in his raised hand. Mr. A has a gun in his waistband and shoots the boyfriend. DOL reviewed the circumstances and determined it couldn't prove a) that Mr. A had started a violent incident and therefore couldn't claim self defense because it wasn't clear that he was in any way physically threatening the girlfriend; and b) that Mr. A knew that he could retreat. This was a situation that came up quickly and a bat absolutely is a deadly weapon so Mr. A was not charged. HB 381 will exacerbate this type of situation, she asserted.
- Mr. A was found stabbed to death and in a ditch. There was no eyewitness but the police learned that he was seen arguing with Mr. B earlier in the evening. Mr. B acknowledged that they had been arguing. Mr. B said Mr. A threw a coat over my head and I knew that he always carried a knife so I thought he was trying to catch me off guard so he could stab me. I ripped the coat off my head and I stabbed him. Because there were no eyewitnesses DOL knew it

couldn't prove that Mr. B's story wasn't true so he wasn't charged.

CHAIR FRENCH recessed the meeting from 10:06 a.m. to 10:25 a.m. due to a fire alarm.

10:25:26 AM

MS. MCLEAN provided a third example where the state did not file charges because it could not prove that the person did not act in self defense.

- The police were called because Mr. A was sitting on the curb and it appeared that his throat had been cut. Mr. A said he and Mr. B were in the adjacent apartment building and they were fighting. Mr. A was intoxicated. A woman in the apartment said she saw Mr. B cutting Mr. A but she didn't know what happened before that because she was in a different room, but she could hear them quarreling. Mr. B told the police that he and Mr. A were fighting. He said Mr. A tried to strangle me and I felt that I had to use deadly force to prevent my being killed. The intoxicated Mr. A said he didn't know where his hands were when he was fighting Mr. B. The state's perspective is that it didn't see a duty to retreat and couldn't disprove the reasonableness of Mr. B's use of force.

MS. MCLEAN noted that the packets have a copy of the jury instructions and use note that are typically given in cases where deadly force is used. It clearly states that a person may use deadly force unless he/she knows that he/she can safely retreat. The retreat duty doesn't apply in the specified circumstances like the home. These cases that are before a jury have already gone through a screening process in which DOL has assessed them and made a decision that there is no reasonable basis to claim self defense in the case and charged. That's an example of why it's troubling to have a bill in which it is alleged that people need protection from overzealous prosecutors who are prosecuting people who have legitimately acted in self defense.

10:29:20 AM

MS. MCLEAN emphasized that DOL believes that if this bill becomes law it will absolutely increase trials. A defense attorney now might advise a client to consider a resolution that would save some jail time, but under this bill the defense attorney is likely to advise a client to go to trial because he/she didn't have to retreat. Furthermore, this change in the

law would give unreasonable people a license to act unreasonable and not retreat. The prosecution won't be able to say that it wasn't reasonable for a person not to retreat when there's a law that says they the person didn't need to retreat.

[10:33:45 AM](#)

CHAIR FRENCH moved conceptual Amendment 1 and objected for discussion purposes.

AMENDMENT 1

Add at the end of paragraph (5):

Provided that such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat only if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the sue of deadly force against the intruder or attacker.

CHAIR FRENCH, noting that the amendment came from the Department of Law, asked DOL for an explanation.

MS. MCLEAN reiterated that DOL is opposed to this bill. The amendment attempts to say that a person that is in a place they have a right to be can use deadly force if the evidence shows that it was the only way that the person could have defended him/herself against death or serious physical injury.

[10:36:09 AM](#)

CHAIR FRENCH removed his objection to Amendment 1

SENATOR COGHILL asked for help understanding the nexus between "reasonably believes" [on line 3] and "only" [be saved] on line 4.

SENATOR WIELECHOWSKI interpreted it to mean that a person reasonably believes that they can only be saved by the use of deadly force.

CHAIR FRENCH agreed.

SENATOR COGHILL said that's the clarification he wanted; otherwise there could be two standards.

10:37:55 AM

CHAIR FRENCH observed that the instructions that the jury receives is helpful. He read the following reasonableness clause from the pattern jury instruction that is given in cases involving use of deadly force in defense of self or others:

The reasonableness of a defendant's beliefs must be evaluated by the jury based on the circumstances of the situation facing the defendant, including any relevant knowledge the defendant had about the other person; physical attributes of all persons involved (including the defendant); and any prior experiences that could provide a reasonable basis for the defendant's beliefs.

SENATOR COGHILL observed that "reasonably" gives the mental state while "only" says that it's without regard to mental state.

SENATOR WIELECHOWSKI asked if "reasonably believes" is an objective standard or a subjective standard.

MS. MCLEAN explained that there are always two standards in self defense. First, there has to be proof of an actual subjective belief - the defendant has to actually believe it. Second, there has to be a subjective belief that the jury is willing to regard as reasonable.

10:39:30 AM

CHAIR FRENCH added that the reasonableness clause is somewhat subjective, but reasonable belief means that a reasonable person would have held such a belief under the same circumstance.

SENATOR COGHILL observed that the part people will have to look at is whether or not [the use of deadly force] was the only way out.

CHAIR FRENCH reminded the committee that it's the prosecution that will have to disprove the defense beyond a reasonable doubt. The defendant doesn't have to prove that their action was reasonable.

10:41:00 AM

SENATOR MCGUIRE asked how intoxication is treated.

MS. MCLEAN advised that intoxication is not a defense to a criminal act unless the charge is an intentional criminal act.

In the case of homicide it is first degree murder with the specific intent to kill and then the jury can consider it as how it impacted the defendant's ability to form an intent.

CHAIR FRENCH asked how it plays out in a self defense claim.

MS. MCLEAN replied you're talking about diminished capacity and the status of that defense is always up in the air in Alaska. Basically, if self defense is raised the jury will hear everything.

SENATOR MCGUIRE said she appreciates the sentiment of the bill and she intends to support it, but she's concerned about the use of alcohol and how this may be interpreted by young people who are already inclined to pull out a knife or gun to settle a dispute.

[10:46:14 AM](#)

CHAIR FRENCH announced that without further objection, conceptual Amendment 1 is adopted. He held HB 381 in committee.

CHAIR FRENCH recessed the meeting to a call of the chair at 10:46 a.m.