

HOUSE FINANCE COMMITTEE  
April 4, 2011  
6:05 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 6:05 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair  
Representative Bill Thomas Jr., Co-Chair  
Representative Anna Fairclough, Vice-Chair  
Representative Mia Costello  
Representative Mike Doogan  
Representative Les Gara  
Representative David Guttenberg  
Representative Reggie Joule  
Representative Mark Neuman  
Representative Tammie Wilson

MEMBERS ABSENT

Representative Bryce Edgmon

ALSO PRESENT

Ron Shattuck, Staff to Representative Neuman; Anne Carpeneti, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law

PRESENT VIA TELECONFERENCE

Brian Judy, Alaska State Liaison, National Rifle Association; William Pinney, Self; Bob Nelson, Self; Nick Herrera, Self; Paul Brown, Self, Fairbanks; Quinlan Steiner, Public Defender, Department of Law

SUMMARY

HB 80-SELF DEFENSE

HB 80 was REPORTED out of Committee with a "do pass" recommendation and with a new indeterminate note by the Department of Law and previously published fiscal note: FN1 DPS.

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#hb80

HOUSE BILL NO. 80

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

Co-Chair Stoltze discussed housekeeping.

RON SHATTUCK, STAFF, REPRESENTATIVE MARK NEUMAN, summarized the legislation. He testified that HB 80 addressed the concern that the current Alaska statute limited the rights of individual Alaskan's to adequately defend themselves. The legislation was crafted in response to constituent concerns regarding existing state law that specified:

"An individual has a duty to retreat when he or she knows that it can be achieved safely."

Mr. Shattuck shared that while researching the issue of individual self-defense it had been discovered that 18 other states shared Alaska's deficiency in clarifying a citizen's right to self-defense while "in a place where the individual had a right to be." It had also been found that the National Rifle Association (NRA) was engaged in discussions on the topic. The goal of the legislation was to make clear to individual Alaskans, law enforcement, and the courts that individuals had the right of self-defense in any place where they had a right to be. It was also expected to deter criminals.

Mr. Shattuck explained that under Section 1 of the bill AS 11.81.335(b) was amended to read:

(4) protecting a child or a member of the persons household; or  
**(5) in any place where the person has a right to be.**

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Co-Chair Stoltze noted that Representative Costello was listed as a prime sponsor of the bill.

BRIAN JUDY, ALASKA STATE LIAISON, NATIONAL RIFLE ASSOCIATION (NRA) (via teleconference), testified in strong support of HB 80. He stated that the legislation would provide that law abiding individuals had no duty to retreat from an attack and were justified in using deadly force if they were in any place they had a legal right to be. He stated that the bill only applied to a person who had justification to use deadly force. He stated that existing Alaska law provided that there was no duty to retreat from areas such as a home or workplace. However, if a person knows that they can safely retreat from an encounter outside of those locations, they are legally required to do so. He stated the bill did not change the primary consideration that the use of deadly force must be justified. He relayed that use of deadly force was justifiable if a person had the reasonable fear of an assailant exercising unlawful use of force which would lead to: death, serious physical injury, kidnapping, sexual assault, or robbery. He said that existing state law laid out in what circumstances justification could not be claimed:

- if the individuals were engaged in mutual combat
- if the individual is the initial aggressor of a conflict
- if the individual provoked the other's conduct
- if the individual is involved in felonious activity or gang activity as laid out in the Alaska code

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Mr. Judy stated that removing the duty of retreat from current statute would alter the need for justification for the use of deadly force. Currently, a person who resists and aggressor overzealously without the consideration of retreat would bear the risk of conviction. The bill removes the retreat provision from the victim, shifting the risk calculation back to the aggressor. He disputed concerns that the legislation would encourage unnecessary violence. He argued that the bill only spoke to cases where the individual was clearly justified in the use of deadly force. He relayed that the NRA believed that the "sanctity of life" arguments were less compelling when the person killed was committing a violent crime against another

individual. He concluded victims and not criminals should be protected under the law.

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WILLIAM PINNEY, SELF (via teleconference), spoke in favor of the legislation. He relayed a personal story of road rage. He stated that during the encounter with what he considered an enraged, possibly drugged man, he did not have the option to retreat. The man had produced a wooden baseball bat and approached him. Mr. Pinney revealed to the committee that he had a concealed carry permit and had drawn his weapon. As the man approached his vehicle he warned the man that he should stay back. The man did not heed the warning immediately, but eventually retreated. He believed that the proposed legislation would protect Alaskans.

Representative Gara pointed out that law currently in place protected the actions taken by Mr. Pinney.

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BOB NELSON, SELF (via teleconference), testified in support of the legislation. He relayed a personal story involving a confrontation with a man shouting profanities and making obscene gestures inside a grocery store. Mr. Nelson had asked the man to take the behavior outside when the man attacked Mr. Nelson. As Mr. Nelson tried to retreat the man struck him multiple times. He suffered a brain injury as a result of the beating. He said that his victim's rights were abridged during the court proceedings that had followed and that he would never retreat in a situation of that nature again.

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NICK HERRERA, SELF (via teleconference), testified in support of the legislation. He believed that the legislation would strengthen the rights of victims. He stressed that the idea of taking a human life should not be taken lightly. He thought that HB 80 would empower law-abiding individuals to protect themselves.

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Representative Gara wondered if the committee had heard from the Department of Law (DOL) concerning the issue.

Co-Chair Stoltze asked Mr. Shattuck how many emails from constituents had been received regarding the legislation. Mr. Shattuck replied that 80 emails had been received.

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ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW, responded that the department did not have a position on HB 80. She understood that she had been called to discuss the fiscal note. She stated that a common misconception of the current law was that it required a person to make a split second decision in a high-pressure situation. She explained that the law only required a citizen to retreat when the person knew they could do so in perfect safety. She asserted that the state did not prosecute people who act in self-defense.

Representative Wilson wondered how the outcome of any past homicide cases would have changed under the new legislation. Ms. Carpeneti believed that a lot of people charged with homicide or serious assaults would pursue a self-defense line of defense; which otherwise would not be allowed under the current law.

Representative Wilson reminded Ms. Carpeneti that she had previously testified that HB 80 did not really change how the department prosecuted self-defense cases under the current statute. Ms. Carpeneti explained that the law did not presently require a person to retreat unless the person believed they could do so in complete safety. She furthered that the difference was that HB 80 would allow a person to use deadly force without any duty to retreat, as long as they were justified in using deadly force. She said that her perspective as a prosecutor exposed her to people who did not have the same respect for human life as the general public. She felt that the legislation would lead to more people falsely claiming self-defense and that the state might not be able to disprove the claim beyond a reasonable doubt.

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Representative Wilson noted that the fiscal note listed two additional full-time employees. She believed that in order

to establish the fiscal note the department must have some idea of the number of cases that would result from the new legislation. Ms. Carpeneti responded that the most recent fiscal note was indeterminate because it was difficult to determine how much the legislation would cost. She reiterated that the department thought that more people would claim self-defense, making prosecutions more difficult.

Representative Wilson countered that other states were enacting similar legislation and perhaps the department was out-of-touch with public opinion.

Co-Chair Stoltze wondered if being a prosecutor limited a person's ability to empathize with a victim. Ms. Carpeneti replied that prosecutors worked regularly with the victims of crime. She added that in Florida, which had a similar statute, the legislation had caused additional hearings and use of resources.

Representative Guttenberg asked if public defenders would expect an increased workload because of HB 80.

MR. QUINLAN STEINER, PUBLIC DEFENDER, DEPARTMENT OF LAW, (via teleconference) thought that the duty to retreat and the justification to use self-defense were mutually exclusive. He did not believe that the legislation would have significant fiscal impact. He believed that the issue of self-defense was always on the table for debate. Whether the bill provided additional available defense or not did not significantly change the outlay of the case. The legislation arguably took away the state's ability to charge under certain circumstances, but he did not think that the fiscal impact would be significant.

Co-Chair Stoltze stressed that ambiguity in the law was an additional burden for a victim. He asked whether there would be less work if self-defense cases were not prosecuted. Mr. Steiner replied that he could not predict one way or the other the fiscal impact of the legislation.

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PAUL BROWN, SELF, FAIRBANKS, (via teleconference) testified in support of HB 80.

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Representative Doogan queried the full meaning of the language found on page 2, line 3 of the bill, "in any place where the person has a right to be".

Mr. Shattuck explained:

"If you were walking across a parking lot in a public place, from the mall with a handful of groceries, and it was late at night, you had a right to be there. It is a public place. In the middle of an open parking lot where there was no cover, perhaps, it was unreasonable to suspect that you could reasonably retreat. You would have to stand your ground and protect yourself."

Mr. Shattuck concluded that the definition typically referred to places that were public or to a place where the individual had been invited.

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Co-Chair Stoltze asked if the response had satisfied Representative Doogan.

Representative Doogan replied no.

Representative Doogan stated that the language, if not a term of law, was subject to interpretation. He argued that he would need to know how the language would most commonly be interpreted in order to fully understand what would happen under the legislation.

Ms. Carpeneti summarized that the department interpreted the language as; and individual had the right to be anywhere as long as they were not trespassing. She added if an individual was trespassing on someone's land uninvited they would have a duty to retreat.

Representative Doogan asked how the language applied to the public domain. Ms. Carpeneti responded that the public domain belonged to everyone, so everyone had the right to be there. Under HB 80 a person would not be required to retreat while in a public park, even if they could do so with complete safety to themselves and others.

Representative Guttenberg understood that the bill gave people the right to defend themselves regardless of where they were. Ms. Carpeneti replied in the affirmative.

Representative Guttenberg said that the bill simply removed a split-second decision that a person would probably not have the time to make anyway. Ms. Carpeneti stated that the current law did not require a person to make that split-second decision unless it was known that the person could retreat in complete safety. The legislation under discussion in committee allowed the individual not to retreat even if it could be done safely.

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Representative Guttenberg asked if the bill would have changed the outcome of the Big Lake, Alaska case in which Pastor Phillip Mielke was acquitted after he shot and killed two intruders as they ran away from his church.

Ms. Carpeneti stated that the case was a point of concern and was worth discussing. Mr. Mielke had been in a place that he had a right to be in and had no duty to retreat. However, the assailants were running away. She did not believe that the legislation would have made a difference in that particular case.

Co-Chair Stoltze wondered whether the attitudes of the prosecutors would have been affected if HB 80 had been the statute at the time of the trial. Ms. Carpeneti replied the question should be presented to the prosecutors who worked on that particular case.

Vice-chair Fairclough wondered about incidents of road rage. She wondered whether a person driving recklessly on a public road, as in the situation relayed by Mr. Pinney, should be subject to the use of physical force.

Ms. Carpeneti admitted that that situation was a tough one to wrap her head around. She said that the bad driver would have the right to be on a public street but not the right to commit a traffic infraction.

Vice-chair Fairclough voiced support for the legislation.

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Co-Chair Stoltze noted the zero FN1: DPS and the new indeterminate fiscal note from DOL.

Co-Chair Stoltze closed public testimony.

6:59:14 PM

Representative Costello MOVED to report HB 80 out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HB 80 was REPORTED out of Committee with a "do pass" recommendation and with a new indeterminate note by the Department of Law and previously published fiscal note: FN1 DPS.

7:00:05 PM

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ADJOURNMENT

The meeting was adjourned at 7:00 PM.