

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 6, 2013

1:06 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Gabrielle LeDoux  
Representative Charisse Millett  
Representative Lance Pruitt  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 24

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

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 4

Urging the President of the United States to rescind 23 executive orders related to regulation of firearms; and urging the United States Congress to refrain from passing legislation that restricts the right of individuals to keep and bear arms.

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 24

SHORT TITLE: SELF DEFENSE

SPONSOR(S): REPRESENTATIVE(S) NEUMAN, ISAACSON, LYNN, FEIGE

01/16/13	(H)	PREFILE RELEASED 1/7/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	JUD, FIN
02/06/13	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 4

SHORT TITLE: OPPOSE GUN CONTROL ORDERS & LEGISLATION  
SPONSOR(S): REPRESENTATIVE(S) MILLETT

01/24/13 (H) READ THE FIRST TIME - REFERRALS  
01/24/13 (H) JUD  
02/06/13 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE MARK NEUMAN  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 24 as one of its joint prime sponsors.

REX SHATTUCK, Staff  
Representative Mark Neuman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Assisted with the presentation of HB 24 on behalf of Representative Neuman, one of bill's joint prime sponsors.

RODNEY DIAL, Lieutenant, Deputy Commander  
A Detachment  
Division of Alaska State Troopers  
Department of Public Safety (DPS)  
Ketchikan, Alaska

**POSITION STATEMENT:** During discussion of HB 24, relayed that the DPS is neutral on the bill, and responded to a question.

QUINLAN STEINER, Director  
Central Office  
Public Defender Agency (PDA)  
Department of Administration (DOA)  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of HB 24.

BRIAN JUDY, Senior State Liaison  
National Rifle Association - Institute for Legislative Action  
(NRA-ILA)  
Sacramento, California

**POSITION STATEMENT:** Testified in support of HB 24 and responded to questions.

MIKE COONS

Palmer, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 24.

SCOTT HAMANN

Kenai, Alaska

**POSITION STATEMENT:** Testified in support of HB 24.

BRIAN JUDY, Senior State Liaison

National Rifle Association - Institute for Legislative Action  
(NRA-ILA)

Sacramento, California

**POSITION STATEMENT:** Testified in support of HJR 4 and responded to a question.

SCOTT HAMANN

Kenai, Alaska

**POSITION STATEMENT:** Testified in support of HJR 4.

#### **ACTION NARRATIVE**

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**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Keller, Foster, LeDoux, Lynn, Millett, and Gruenberg were present at the call to order. Representative Pruitt arrived as the meeting was in progress.

#### **HB 24 - SELF DEFENSE**

[1:06:06 PM](#)

CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 24, "An Act relating to self-defense in any place where a person has a right to be."

CHAIR KELLER noted that the committee had addressed a previous iteration of HB 24 during the last legislature.

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REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, speaking as one of the joint prime sponsors of HB 24 and mentioning the castle doctrine, explained that the bill was introduced because he'd felt it necessary to address the concerns of his constituents and other Alaskans regarding their ability to

defend themselves. House Bill 24 would clarify that [the affirmative defense of self-defense could be available to anyone who uses] deadly force in any place he/she has a right to be. The bill would add a new paragraph (5) to AS 11.81.335(b), thereby stipulating that [there is no duty to leave the area if the person is] in any place where the person has a right to be.

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REX SHATTUCK, Staff, Representative Mark Neuman, Alaska State Legislature, on behalf of Representative Neuman, one of the joint prime sponsors of HB 24, noted that current statutes [addressing the affirmative defense of self-defense] outline the circumstances under which the use of nondeadly force is justified, and the circumstances under which the use of deadly force is justified. Under the bill's proposed new AS 11.81.335(b)(5), he elaborated, a person may not use deadly force under [AS 11.81.335] if the person knows that with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter, except there is no duty to leave the area if the person is in any place where the person has a right to be.

REPRESENTATIVE LEDOUX questioned whether existing AS 11.81.335(b)(1) and (3) should be deleted as superfluous given that proposed new paragraph (5)'s language, "in any place where the person has a right to be", would include the locations currently outlined in those paragraphs (1) and (3): premises that the person owns or leases, premises where the person resides at, premises where the person is the guest or agent of the owner, lessor, or resident, and a building where the person works in the ordinary course of his/her employment.

REPRESENTATIVE NEUMAN concurred with regard to the locations outlined in existing paragraphs (1) and (2), and remarked that the bill would allow any person who isn't trespassing to use deadly force "before it happens."

REPRESENTATIVE GRUENBERG, concurring with Representative LeDoux, expressed interest in deleting existing paragraphs (1) and (3) from AS 11.81.335(b).

MR. SHATTUCK relayed that the bill is intended to clarify that if one isn't trespassing, there is no duty to retreat.

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REPRESENTATIVE GRUENBERG asked how the terms, "area of the encounter" as used in existing AS 11.81.335(b), and, "the person's household" as used in existing AS 11.81.335(b)(4), were defined; existing paragraph (4) says in part, "protecting a child or a member of the person's household". He also raised the issue of using deadly force to defend a third person who is not a member of the household.

REPRESENTATIVE NEUMAN relayed that the term, "the person's household" is defined in statute, and surmised that the courts would address a particular person's actions on a case-by-case basis at trial.

MR. SHATTUCK added that existing AS 11.81.340 addresses the use of force in defense of a third person who is not a member of the household.

REPRESENTATIVE GRUENBERG, raising the issue of surplusage, again expressed interest in deleting existing paragraphs (1) and (3) from AS 11.81.335(b).

REPRESENTATIVE NEUMAN, in response to comments and questions, relayed that HB 24 wouldn't be making any other changes to existing law, and explained that the bill was drafted as it was at the drafter's recommendation.

MR. SHATTUCK added that the bill is intended to clarify that a person has the ability to defend himself/herself, and reiterated that under the bill's proposed change, there would be no duty to retreat if the person is any place he/she has a right to be.

CHAIR KELLER pointed out that under both existing law and the bill, the standard is one of "knowing"; under subsection (b) of AS 11.81.335, if one "knows" that one can avoid using deadly force while remaining completely safe simply by leaving the area, then one may not use deadly force [under AS 11.81.335].

MR. SHATTUCK - after paraphrasing a quote by U.S. Supreme Court justice Oliver Wendell Holmes, Jr., from Brown v. United States, 256 U.S. 335 (1921), "Detached reflection cannot be demanded in the presence of an uplifted knife." - characterized the duty to retreat as an awful burden.

REPRESENTATIVE NEUMAN offered his understanding that the fiscal notes submitted for HB 24 indicate that the bill won't impact the departments' ability to do their jobs.

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RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said simply that the DPS is neutral on HB 24. In response to a question, he explained that passage of the bill would not impact how the DPS investigates deaths, and that it would be up to the Department of Law (DOL) to determine how to charge a person in any given case.

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QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), in response to a question, clarified that the statute being changed by HB 24 doesn't mandate that an attacked person retreat, but instead simply stipulates that if the person can retreat in complete safety, he/she doesn't then have the statutory authority to go so far as to use deadly force in response to the attack. This has been borne out in case law. In response to further questions, he relayed that the terms, "deadly force" and "household member" are defined in statute; offered his belief that the statutory definition of the term, "household member" found in AS 18.66.990(5) would be used in cases involving Title 11, since there is already a reference in Title 11 to that Title 18 definition; surmised that passage of the bill wouldn't change the arguments raised in court, or their outcomes, in cases involving [the affirmative defense of self-defense]; and paraphrased from AS 18.66.990(5), which read:

- (5) "household member" includes
  - (A) adults or minors who are current or former spouses;
  - (B) adults or minors who live together or who have lived together;
  - (C) adults or minors who are dating or who have dated;
  - (D) adults or minors who are engaged in or who have engaged in a sexual relationship;
  - (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
  - (F) adults or minors who are related or formerly related by marriage;

(G) persons who have a child of the relationship;  
and  
(H) minor children of a person in a relationship  
that is described in (A) - (G) of this paragraph;

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BRIAN JUDY, Senior State Liaison, National Rifle Association - Institute for Legislative Action (NRA-ILA), said the NRA strongly supports HB 24, which he characterized as important self-defense legislation. Under the bill, he surmised, only a person who is justified in using deadly force won't have to retreat from any place he/she has a legal right to be, and thus the question to be addressed [in any case wherein the affirmative defense of self-defense is pursued] will be whether the person really was justified, and existing law already outlines what constitutes justification, with AS 11.81.330 first addressing both justification for the use of nondeadly force and the circumstances under which nondeadly force wouldn't be justified, and with AS 11.81.335(a) then addressing justification for the use of deadly force. Specifically, AS 11.81.335(a) stipulates that a person who is justified in using nondeadly force may [instead] use deadly force in defense of himself/herself when [and to the extent] he/she reasonably believes that deadly force is necessary to defend against death, serious physical injury, kidnapping [that is not custodial interference in the first degree,] sexual assault [in the first or second degree, sexual abuse of a minor in the first degree,] or robbery. Under the bill, [in pursuing the affirmative defense of self-defense,] as long as [the person could prove both that] he/she was justified in using the deadly force and that the encounter took place somewhere where he/she had a right to be, the person would no longer have to also prove that he/she first ascertained that he/she couldn't leave the area in complete safety.

MR. JUDY, in conclusion, opined that victims should have the protection of law when they stand their ground and defend themselves while they are someplace they have a right to be, and urged the committee to support HB 24. In response to questions, he surmised that deleting existing AS 11.81.335(b)(1) and (3) would remove language made redundant by the bill's proposed new AS 11.81.335(b)(5); and characterized Alaska's statutes [addressing the affirmative defense of self-defense] as fairly logical and typical.

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MIKE COONS - after referring to his work-related "use of force continuum" training and his training for carrying a concealed weapon - opined that HB 24 would protect those who have to use deadly force to defend themselves from an attack, from then being further victimized during the resulting court proceeding.

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SCOTT HAMANN relayed that he is pleased to see HB 24's proposed change [to the statutes addressing the affirmative defense of self-defense] regarding places where a person has a right to be, characterized the bill as important, concurred that perhaps any resulting redundant language could be deleted, expressed support for HB 24, and urged its passage.

CHAIR KELLER, after ascertaining that no one else wished to testify, closed public testimony on HB 24.

REPRESENTATIVE NEUMAN, in conclusion, observed that deleting existing AS 11.81.335(b)(1) and (3) could have an effect, and surmised that they were included in existing law for a reason.

REPRESENTATIVE PRUITT expressed a concern that deleting those provisions could result in more questions being raised at trial.

CHAIR KELLER, in response to a question, noted that the Department of Law (DOL) had provided testimony on the aforementioned previous iteration of HB 24 during the last legislature. Chair Keller then relayed that HB 24 would be held over.

#### **HJR 4 - OPPOSE GUN CONTROL ORDERS & LEGISLATION**

[2:15:24 PM](#)

CHAIR KELLER announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 4, Urging the President of the United States to rescind 23 executive orders related to regulation of firearms; and urging the United States Congress to refrain from passing legislation that restricts the right of individuals to keep and bear arms. [Included in members' packets was a proposed committee substitute for HJR 4, Version 28-LS0362\U, Strasbaugh, 2/6/13.]

REPRESENTATIVE MILLETT, speaking as the sponsor of HJR 4, indicated that the proposed committee substitute (CS) in

members' packets need not be adopted at this time because further changes to the resolution would be forthcoming to address the fact that the 23 executive orders referenced in the resolution [were instead issued] as executive actions or executive recommendations. She explained that HJR 4 addresses Alaskans' right to bear arms as outlined in both the U.S. Constitution and the Alaska State Constitution. Alaskans pride themselves on gun ownership, gun safety, and the ability to recreate with guns - hunting and target shooting, for example. Referring to recent tragedies that occurred in the Lower 48 involving firearms, she said that the Second Amendment and the Tenth Amendment of the U.S. Constitution must still be protected nonetheless. Gun legislation currently making its way through Congress would restrict the rights of Alaskans to make their own decisions about guns and their associated laws and regulations.

REPRESENTATIVE MILLETT said HJR 4 urges the Obama Administration and the United States Congress not to pass any gun legislation that would restrict or damage the people's Second Amendment rights. Alaskans themselves, she opined, are the best ones to decide upon Alaska's gun laws. Alaska has a large gun-owner population, but few instances of what she referred to as gun abuse. In conclusion, she recommended that members view HJR 4 as way of sending a message to Congress and the Obama Administration that a one-size-fits-all approach to guns won't work for Alaska, and opined that the state's right to control its own guns must prevail. In response to a question, she relayed that in addition to changing the references to executive orders, further changes regarding congressional action on gun laws might also be forthcoming [in a new proposed (CS)].

REPRESENTATIVE GRUENBERG - referring to a document in members' packets produced by the White House titled, "NOW IS THE TIME, The President's plan to protect our children and our communities by reducing gun violence" - observed that the legislature may not necessarily wish to oppose all 23 of the executive orders/actions/recommendations.

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BRIAN JUDY, Senior State Liaison, National Rifle Association - Institute for Legislative Action (NRA-ILA), said the NRA supports HJR 4 and is strongly opposed to the President's legislative proposals, and thus views the most important aspect of the resolution as being its urging of Congress to refrain from passing [restrictive gun-related] legislation. Regardless that some of the 23 executive orders/actions/recommendations are

good or benign, some are potentially very bad and thus the resolution should continue to ask the President to rescind all 23. In conclusion, he urged support for HJR 4, and said he thinks it's a good idea for Alaska to assert its prerogative as a state and to point out that one-size-fits-all approaches don't fit everywhere. In response to a question, he offered his understanding of what some of the 23 executive orders/actions/recommendations might entail.

REPRESENTATIVE MILLETT did so as well.

MR. JUDY added his belief that the 23 executive orders/actions/recommendations are going to impact law-abiding gun owners and could have unintended consequences.

REPRESENTATIVE GRUENBERG suggested that the resolution be changed so that it focuses only on the executive orders/actions/recommendations that would cause problems in Alaska - outlining why as well as possible alternative solutions - and asked that specific information about each order/action/recommendation be provided to the committee.

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SCOTT HAMANN said he supports HJR 4 and views it as addressing a state's rights issue. As such, the resolution should continue referencing all 23 executive orders/actions/recommendations regardless of whether any of them individually are looked upon with favor by the legislature.

CHAIR KELLER ascertained that no one else wished to testify on HJR 4.

[HJR 4 was held over.]

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:37 p.m.