

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 3, 2014

1:36 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Donald Olson

COMMITTEE CALENDAR

SENATE BILL NO. 108

"An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 128

"An Act relating to the crime of harassment."

- HEARD & HELD

SENATE BILL NO. 176

"An Act relating to the regulation of firearms and knives by the University of Alaska."

- HEARD & HELD

SENATE BILL NO. 171

"An Act relating to multidisciplinary child protection teams; and relating to investigation of child abuse or neglect."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 108

SHORT TITLE: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS

SPONSOR(S): SENATOR(S) DYSON

01/22/14 (S) PREFILE RELEASED 1/10/14
01/22/14 (S) READ THE FIRST TIME - REFERRALS
01/22/14 (S) JUD, FIN
02/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/14 (S) Heard & Held
02/24/14 (S) MINUTE(JUD)
02/28/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/28/14 (S) Heard & Held
02/28/14 (S) MINUTE(JUD)
03/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 128

SHORT TITLE: ELECTRONIC BULLYING

SPONSOR(s): SENATOR(s) MEYER

01/22/14 (S) READ THE FIRST TIME - REFERRALS
01/22/14 (S) JUD
02/17/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/17/14 (S) Scheduled But Not Heard
02/19/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/19/14 (S) Heard & Held
02/19/14 (S) MINUTE(JUD)
03/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 176

SHORT TITLE: REG. OF FIREARMS/KNIVES BY UNIVERSITY

SPONSOR(s): SENATOR(s) COGHILL

02/14/14 (S) READ THE FIRST TIME - REFERRALS
02/14/14 (S) JUD
03/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

CHUCK KOPP, Staff
Senator Fred Dyson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented changes in SB 108 on behalf of the sponsor.

NANCY MEADE, General Council
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Presented information related to SB 108.

EDRA MORLEDGE, Staff

Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented changes in version Y of SB 128 on behalf of the sponsor.

KATHLEEN STRASBAUGH, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 128.

ANNE CARPENETTI, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 128.

HANS RODVIK, Intern
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 176 on behalf of the sponsor.

PAT GAMBLE, President
University of Alaska System
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 176.

ACTION NARRATIVE

[1:36:58 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Wielechowski, Dyson, and Chair Coghill.

[1:37:59 PM](#)

At ease

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CHAIR COGHILL brought the meeting back to order.

SB 108-LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS

[1:39:12 PM](#)

CHAIR COGHILL announced that the first order of business would be SB 108. "An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."

SENATOR DYSON related that he had hoped the committee substitute (CS) would be ready. He said Mr. Kopp would report on the progress of the CS thus far.

CHUCK KOPP, Staff, Senator Fred Dyson, Alaska State Legislature, Juneau, Alaska, presented the proposed changes to SB 108.

1. Consider language to treat as confidential the records of criminal cases disposed of before the effective date of the Act by acquittal of all charges, dismissal of all charges, or a combination thereof, and applying to those who appeared on CourtView.
2. Extend the time limit for a record to become confidential from 90 days from the date of acquittal, dismissal, or a combination thereof, to 120 days. This is at the request of the Department of Law (DOL) in order to match the 120-day rule.
3. Change the effective date of the Act from July 1, 2014 to October 1, 2014 to give the court more time to comply.
4. Designate as confidential only those cases that were dismissed by the prosecuting authority, not by the court in the furtherance of justice, or for other reasons. He noted that DOL requested this change, but it's yet to be resolved. He requested Ms. Meade discuss that issue and whether or not there can be a confidential carve-out for state agencies on the database that is otherwise confidential to the public.

CHAIR COGHILL announced the arrival of Senator McGuire.

NANCY MEADE, General Counsel, Administrative Staff, Alaska Court System, Anchorage, Alaska, noted that the Court System is neutral on the bill. She responded to a request to address other reasons for dismissal, aside from dismissals by the prosecution. She began by describing reasons a court will dismiss a criminal case. She said it is not the case that the court dismisses old criminal cases, except if there is a violation in the speedy trial rule. The court does dismiss some criminal actions for reasons that are listed in Rule of Criminal Procedure 43, in furtherance of justice, mistaken identity, or if probable cause is not found under Criminal Rule 5.1. Those reasons would be discussed with the prosecutor and be known by the parties. When cases are dismissed, the court signs an order making it official. It would be confusing if cases dismissed by the

prosecution were treated differently than those dismissed by the court.

MS. MEADE addressed whether a state agency, such as DHSS, can have access to confidential files on CourtView. She understood that the request is for public safety reasons. She said there is not currently a means for doing so. There is a public version of CourtView and an internal court version. She did not know if it was possible to allow access to the internal system. It would take a vast change and would have a cost. She pointed out that there is a way that prosecutors access confidential cases - by being cleared through the Alaska Public Safety Information Network (APSIN.)

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CHAIR COGHILL advised that those issues will be dealt with in the next CS.

SENATOR WIELECHOWSKI asked how hung juries and moving violations are treated in the bill.

MS. MEADE explained that minor traffic offenses would not be covered because the bill addresses criminal cases. She understood that hung juries have 120 days to be retried, and if the case is retried and it is again a hung jury, the person is not found guilty. That situation would be covered under the bill.

CHAIR COGHILL said it is a balance between the right of people to know for public safety reasons and the right of people to be protected from a bad reputation.

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SENATOR MCGUIRE asked how the bill could be changed to address the case where a person was arrested on suspicion of intoxication.

SENATOR DYSON said that discussion would be held later.

CHAIR COGHILL said SB 108 would be revisited on Wednesday.

SENATOR MCGUIRE asked if it would be included in the new CS.

SENATOR DYSON said he believes that Ms. Meade addressed what was contained in the CS so far.

SENATOR MCGUIRE said she understood that the topic was not covered in the CS for SB 108, which allows for arrest and charging documents, but only if they have had a dismissal or an acquittal. In the case she was concerned with, there was no charge but the arrest remains on record.

CHAIR COGHILL noted there was a lengthy discussion on this topic at the last committee meeting.

MR. KOPP pointed out that the court is addressing that situation currently, so that charges that are not filed by the prosecutor will be addressed. Therefore, it is not in the bill.

CHAIR COGHILL held SB 108 in committee.

SB 128-ELECTRONIC BULLYING

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CHAIR COGHILL announced that the next order of business would be SB 128. "An Act relating to the crime of harassment."

SENATOR MCGUIRE moved to adopt the CS for SB 128, labeled 28-LS1001\Y, as the working document.

CHAIR COGHILL objected.

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EDRA MORLEDGE, Staff, Senator Kevin Meyer, Alaska State Legislature, Juneau, Alaska, presented changes in Version Y of SB 128 on behalf of the sponsor. She described changes to the bill since the last hearing on February 19 to ensure clarity and to prevent overlapping of statutes. There are three circumstances that would cause electronic harassment to become a crime: it causes severe mental or emotional injury, it places a person in fear of significant damage to the person's property, or it places a person in reasonable fear of physical injury. She said the sponsor has worked with the Department of Law, the Public Defender's Office, and Legal Services to develop the latest version of the bill. The sponsor believes it accomplishes some of the issues raised at the first meeting.

CHAIR COGHILL summarized the changes. He inquired if there were other changes.

MS. MORLEDGE noted that the quantifying language "reasonable fear" and "significant damage" was added because the original version was quite broad.

CHAIR COGHILL questioned why it said "fear of significant damage."

MS. MORLEDGE explained that the Department of Law brought it to the sponsor's attention that there are overlapping property crime statutes that carry different penalties and this provision contains a class B misdemeanor penalty.

CHAIR COGHILL asked if it stays within the class B misdemeanor category.

MS. MORLEDGE said yes.

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SENATOR DYSON said he is troubled by the inherent subjectivity of the damage to the victim.

CHAIR COGHILL suggested Legislative Legal could address that issue.

SENATOR DYSON asked if age and disabilities were considered when drafting the bill.

SENATOR MEYER replied they were part of the discussion. He pointed out that cyberbullying impacts children of all ages and capabilities. The bill focuses on children under 18. Research shows an increase in youth suicide as a result of cyberbullying. He thought people with intellectual disabilities had additional protections.

MS. MORELY added that the sponsor felt it was a policy call as to which groups to include. The intention of the bill is to protect school-age children because of the amount of bullying that already occurs. This would add cyberbullying to that category. She noted the sponsor is amenable to adding other groups.

SENATOR DYSON agreed the issue might already be addressed elsewhere.

SENATOR MCGUIRE questioned the "mental intent" on page 1. She noted that the guiding statute is already there under AS 11.61.120 and says they commit the crime of harassment with the intent to harass or annoy another person. She asked if it was "intentional and not reckless."

MS. MORELY said it is intentional.

SENATOR MCGUIRE stated kids are often reckless.

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SENATOR MCGUIRE inquired about the standard on page 2, lines 4-6, when looking at the person receiving the communication. She wondered if the standard was "a reasonable person similarly situated." She questioned if the test is how someone of a similar age would feel if they were teased, taunted, or insulted.

MS. MORELY said that is the intent.

SENATOR MCGUIRE asked for a legal interpretation of whether mental intent is "intentional, not reckless," and that the standard by which the victim is judging is a "reasonable person similarly situated." She also questioned, on line 10, what "significant damage" and "person's property" mean.

MS. MORELY relayed that in the first version of the bill, the language read "damage to the person's property." After working with the Department of Law, Legal Services, and the Office of the Public Defender, it was agreed that placing "significant" in the language would raise the bar high enough.

SENATOR MCGUIRE thought it was important to have a legal opinion on the record.

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SENATOR MEYER suggested the Department of Law answer. He pointed out that a lot of the issues are addressed in the anti-bullying and harassment bills. This bill now includes cyberbullying.

SENATOR MCGUIRE agreed. She maintained with electronic communication there is more room to accidentally hurt someone.

SENATOR WIELECHOWSKI asked if there is a difference between cyber, written, and spoken bullying and requested a comment about the policy call.

SENATOR MEYER gave examples of social media sites that could be broadcast worldwide, creating a much more detrimental result than spoken bullying.

CHAIR COGHILL noted on page 1, the provocation could be written or verbal. He asked how physical contact comes into play.

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SENATOR WIELECHOWSKI thought the bill created two different standards. He posed an example if someone would insult another person resulting in an immediate violent response, then it would be covered under AS 11.61.120(a)(1). But if the person just causes emotional injury, it would not be a crime. On the other hand, if the insult was via an email, it would be a crime.

He asked if sending an electronic communication applies to Facebook and Twitter, or if the post or message must be sent directly to the person.

MS. MORELY related that Legislative Legal Services agreed that the posting to Facebook or to a blog is "sending" so the message does not have to be sent directly to a person.

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KATHLEEN STRASBAUGH, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, stated that "send to a person" is sufficient to cover posting on a social media site where others might see it.

SENATOR WIELECHOWSKI asked whether posting something insulting and intimidating on one's own Facebook page would be violating the law.

MS. STRASBAUGH said it depends on the public nature of the site. She gave an example of a small group of high school students who know that all a person's friends will see the post; there would be a problem.

SENATOR WIELECHOWSKI gave an example of someone who sends an email to a friend who forwards it on to someone under 18 who is insulted by the email.

MS. STRASBAUGH said it depends on the intention of the sender.

SENATOR WIELECHOWSKI inquired if there are any equal protection issues or other issues regarding treating electronic communications differently than letters or in-person communications.

MS. STRASBAUGH opined that the communications are all of a certain type, insulting and provocative in a manner extreme enough to be criminalized. The consequence would be a misdemeanor with a maximum penalty of 90 days and a fine. There

are a number of different offenses under that statute at the same penalty level that have similar components, such as direct contact and anonymous obscene phone calls. The legislature can make a policy determination that those communications are equivalent for the purposes of the statute.

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SENATOR WIELECHOWSKI recalled that the U.S. Supreme Court has allowed heinous communications to be considered free speech. He inquired if the Court might find that the bill oversteps First Amendment rights.

MS. STRASBAUGH said if intent is to harass or annoy, it would depend on who the person is and what the circumstances are. The court seems to make its decision on a case-by-case basis.

SENATOR WIELECHOWSKI gave an example of an email saying someone was a terrible football player and it causing emotional injury. He wondered how the court would look at that.

MS. STRASBAUGH said she didn't know.

SENATOR WIELECHOWSKI asked about significant damage to property and used a pencil as an example.

MS. STRASBAUGH noted duplication in the Y version. On page 7, "causes fear of significant damage to a person's property" can be stricken because it is contained elsewhere in the bill. She deferred to the sponsor to explain the intention with respect to property.

CHAIR COGHILL suggested hearing from the Department of Law.

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ANNE CARPENETTI, Assistant Attorney General, Criminal Division, Legislative Services Section, Department of Law, Juneau, Alaska, pointed out that in the Y version, under 18 years of age only pertains to conduct that causes severe mental or emotional injury, not significant damage to a person's property. She thanked the sponsor for including fear of damage to property. She gave a hypothetical example of how electronic communication might cause fear of damage to property. She said the department's concern is that it overlaps with criminal mischief, which defines damage to property similar to theft with monetary levels. She suggested treating fear of significant damage in SB 128 the same way. It is currently listed as a class B misdemeanor in SB 128.

SENATOR MCGUIRE said she likes the bill. She asked if the language under Section 1 subsection (a) is good enough to charge someone as it stands now, or if it needs clarification regarding electronic communication. She worried the bill creates a separate standard. She implied that the bill makes it harder for the person who is receiving the electronic communication. She objected to a list that might change.

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MS. CARPENETTI offered to help clarify the intent of the bill. She explained that the difference in subsection (a)(1) for harassment is that it is an immediate violent response. The proposal of electronic communication does not require the immediacy of a response.

SENATOR WIELECHOWSKI reiterated his questions about sending an electronic communication via Facebook, the degree of significant damage, and equal protection issues.

MS. CARPENETTI suggested saying "send or post" rather than "send" an electronic communication. On the second matter, she explained that the meaning of significant damage to property is broken down by value under the criminal mischief statute. Regarding equal protection, she said she would like to think about it more, but there is reason to justify this provision because electronic communication gets sent to a lot of people. The potential to have many people see a post is higher than with verbal encounters or letters. She opined that equal protection could be raised.

SENATOR WIELECHOWSKI asked if the intent is person specific.

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MS. CARPENETTI said "culpable mental state" means intending to harass and annoy the victim.

SENATOR DYSON said he could see how property could be damaged by electronic means for an adult. He inquired what protections are already in the law for handicapped persons.

CHAIR COGHILL said the sponsor could research that topic. He asked Senator McGuire to withdraw her motion to adopt the Y version of SB 128 because of the mistakes and issues with that version.

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SENATOR MCGUIRE withdrew her motion to adopt version Y of SB 128.

SENATOR WIELECHOWSKI recommended a Vanderbilt Law Review article on the constitutionality of cyberbullying laws. He concluded that, as currently written, the bill has severe First Amendment issues.

CHAIR COGHILL said it's an excellent suggestion and then directed Senator Meyer to work further on the bill.

CHAIR COGHILL held SB 128 in committee.

CHAIR COGHILL postponed hearing SB 171 until another day.

SB 176-REG. OF FIREARMS/KNIVES BY UNIVERSITY

[2:25:04 PM](#)

CHAIR COGHILL announced that the final order of business would be SB 176. "An Act relating to the regulation of firearms and knives by the University of Alaska."

HANS RODVIK, Intern, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, presented SB 176 on behalf of the sponsor. He described the genesis of the bill:

I attend the University of Alaska Anchorage, majoring in political science. The Anchorage campus is the State of Alaska's largest public university campus. During the 2013 fall semester a diverse array of students, including myself, from the College Republicans, Young Americans for Liberty, and Political Science Association came together to analyze what issues these three clubs could join together on and help change. Being mostly political science majors, we all had quite the intimate relationship with the Constitution. Furthermore, as Alaskans, we understood the long and storied firearm culture our state has, and the special protections our state constitution guarantees us, specifically concerning the right to keep and bear arms. We concluded that the current situation surrounding firearms on campus was unacceptable, and committed to change it.

SB 176 was generated by a grass-roots effort by concerned students who understand individual liberty, the U.S. and Alaska Constitutions, Alaska statute, and

the rule of law. After getting accepted into the legislative internship and being placed with Senator Coghill, I took it upon myself to work on this issue. I presented the idea of SB 176 to Senator Coghill, to which he agreed and from there, well, as they say, the rest is history. With the rest of my time I'll describe what SB 176 does, why this committee should support it, and conclude by giving you a forewarning of the coming arguments.

What does SB 176 do: Most importantly, Senate Bill 176 requires the University of Alaska Board of Regents to comply with the Alaska Constitution, and Alaska statute. SB 176 resolves the conflict, posed to law-abiding citizens, by UA Board of Regents policies and regulations. Since 1995, the Board of Regents has (via policy P02.09.020 Possession of Weapons), prohibited the otherwise lawful (under our constitution and state law) carrying of concealed handguns. The prohibited areas include: university property; university offices or classrooms inside buildings not on university property; and university sponsored activities or meetings not on university property. Board of Regents policy makes an unsubstantiated claim (under our State Constitution or statute) to have governing power over the possession of firearms.

University regulation further compounds the problem by (R02.09.020 Possession of Weapons) prohibiting firearms from being carried or stored on university property or in university buildings. University regulation disarms students living in dorms by forcing them to hand over their firearms to a university employee, who then stores their firearm(s) in a central safe. The abuses of Constitutional rights do not end there. Students, who have firearms, living in residential units, must register their firearms with the university and provide detailed personal information about themselves to designated university employees.

At UAF, the police department requires students to fill out an entire form describing the type of firearm. This includes providing the serial number to the UPD. I see as a violation of multiple Constitutional rights (art 1. Sec.19, art. 1, sec. 22 (right to privacy) and art. 1, sec. 14 (right to be

secure in their property against unreasonable searches and seizures. University regulation also prohibits firearms in residential rooms or apartments, and in any common areas. Lastly, university regulation prohibits firearms on residential grounds.

In Section 2 (a) the legislature reserves the authority to regulate firearms and knives to the state. Unless the legislature specifically designates, the board of regents may not enforce a policy regulating the possession, ownership, use, carrying, registration, storage, or transportation of firearms or knives. With this section, current board of regent policy would not be in compliance with statute, and therefore it would need to be eliminated.

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Section 2 (b) does three things: It requires any policy regulating firearms and knives adopted and enforced by the board of regents be identical to state law - most important. Secondly, these policies cannot deny or infringe the right of the individual (guaranteed by art. 1, sec 19) to keep and bear arms in defense of self or others. Lastly, this section allows the board to have policies that prohibit firearms in restricted access areas of university bldgs.

Two key points about the restricted access subsection. I spoke with the police chiefs at UAA and UAF and both confirmed that currently there are no restricted access areas on campus where people are screened, patted down, etc., meaning free travel throughout both campuses. Also, we carefully defined what a restricted access area is. It is a place where an individual would be screened, which would require a police, guard, or security personnel and does not include common areas open to the public, which are all areas according to the police chiefs.

We are not giving the Board of Regents the authority to declare the entire university system a restricted access area. In summary, SB 176 requires the Board of Regents to come into compliance with our state constitution and law concerning the regulation of firearms and knives.

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SB 176 codifies UA Regents' policy with current statute that already allows law-abiding citizens to carry concealed firearms on campus. The intent of SB 176 is to enable law-abiding citizens to exercise their fundamental right to keep and bear arms on and in the grounds of UA campuses.

The committee should support SB 176 for four main reasons: state constitution, state statute, court cases and historical understanding of the 2nd amendment, statistics and facts. Constitutionally grounds to support SB 176. Second only to the federal constitution, Alaska's constitution is the highest law of the land. Our constitution guarantees that the individual right to keep and bear arm shall not be denied or infringed by the State or a political subdivision of the State. Our state constitution acknowledges the natural right to self-defense, by guaranteeing the individual right to keep and bear arms.

Art. 7, Sec. 3 of the Constitution of the State of Alaska created the board of regents. The regents are appointed by the governor and subject to a confirmation vote of the legislature in joint session. Therefore, the University of Alaska and the board of regents are political subdivisions of the State of Alaska. Furthermore, the board of regents is bound (by the Constitution) to formulate policy in accordance with state law. There is no provision granting the board of regent's authority to dismiss, ignore, or override other parts of the Constitution. There is no question that the UA board of regents is a govt. entity, it is a creation of govt., its employees and managers and paid by the govt., its structures and activities are determine and governed by state law, state constitution, the UA system exists only as authorized by law, perhaps an exact definition of a government entity.

Furthermore, art 1, sec 14 (searches and seizures) and art. 1, sec. 22 (right to privacy) both are applicable to this issue. Firearms are private property and the university as a political subdivision of the state is conducting unreasonable searches on students seeking to store them in their residential units for the

purpose of self-defense. Secondly, when carrying concealed, individuals are making a personal, private choice.

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Statutory basis: There is no current statute that prohibits law-abiding adults 21 and over, from carrying concealed on or in our public universities. Furthermore, under AS 11.61.190-11.61.220, it is not a crime to carry on or in the grounds of UA campuses. Also, under AS 29.35.145, the State of Alaska reserves the right to regulate firearms and knives, therefore, the university has no authority to continue their current practices.

Court rulings and historical understanding of the 2nd Amendment:

Two recent court cases have dealt precisely with firearms on public campuses. The Colorado Supreme Court ruled in *Regents of the University of Colorado v. Students for Concealed Carry on Campus* that the Colorado legislature (through their 2011 concealed carry act) divested the Board of Regents of its authority to regulate concealed handgun possession on campus. The court ruled that "had the legislature intended [exclude] universities, it knew how to do so" (which it did not in their concealed carry act).

In Oregon, the State Court of Appeals ruled that the governing body of the Oregon university system's policy that prohibited individuals with concealed weapons permits from carrying concealed on campus was a violation of statute, and went completely against the intent of the legislature. Other major court rulings support the intent of SB 176. What the Board of Regents is doing, by prohibiting the storage of firearms in residential units, is similar to what the District of Columbia used to do. In *District of Columbia v. Heller* the U.S. Supreme Court found that the District's outright ban on handgun possession in the home amounts to a ban of an entire class of arms, that Americans overwhelmingly choose for the lawful purpose of self-defense, violated the Second Amendment of the U.S. Constitution.

In *McDonald v. Chicago* the U.S. Supreme Court found that the 2nd Amendment right to keep and bear arms

applies to the states because of the 14th Amendment's due process clause. The court also reaffirmed *Heller* by acknowledging that Self-defense is a basic right, recognized by many legal systems from ancient times to the present, and the *Heller* Court held that individual self-defense is "the central component" of the Second Amendment right. The Court found that this right applies to handguns because they are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family." It thus concluded that citizens must be permitted "to use [handguns] for the core lawful purpose of self-defense."

The most recent court case *Peruta v. County of San Diego* clearly supports the intent of SB 176. This case was heard in the U.S. 9th District Court of Appeals and found that a responsible, law-abiding citizen has a right under the Second Amendment to carry a firearm in public for self-defense. The Second Amendment, *Heller* tells us, secures "the right to 'protect' [oneself] against both public and private violence," thus extending the right in some form to wherever a person could become exposed to public or private violence." Also, within *Peruta v. County of San Diego* the court cited William Rawle, *A View of the Constitution of the United States of America* 126 (2ded. 1829) (observing that the Second Amendment would not forbid the prohibition of the "carrying of arms abroad by a single individual, attended with circumstances giving just reason to fear that he purposes to make an unlawful use of them").

These significant court rulings acknowledge the 2nd Amendment guarantees the individual, natural right to self-defense, through the keeping and bearing of arms. Historical analysis and understanding of the 2nd Amendment further recognizes that bearing arms for the purpose of self-defense is a right not confined to the home. As noted in *Heller*, the 2nd Amendment codifies a pre-existing right- that is self-preservation and self-defense of his life and property.

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Given time constraints for today I will briefly cover some of the historical understanding of the 2nd amendment, and how these findings should instruct this

committee to support SB 176. Our greatest President, George Washington said in his personal letters that 'Firearms stand next in importance to the Constitution itself. They are the American people's liberty teeth and keystone under independence ... From the hour the Pilgrims landed, to the present day, events, occurrences, and tendencies prove that to insure peace, security and happiness, the rifle and pistol are equally indispensable . . . the very atmosphere of firearms everywhere restrains evil interference - they deserve a place of honor with all that is good'.

In *Wilson v. State of Arkansas* (1878) the federal appeals court ruled that 'To prohibit a citizen from wearing or carrying a war arm . . . is an unwarranted restriction upon the constitutional right to keep and bear arms. If cowardly and dishonorable men sometimes shoot unarmed men with army pistols or guns, the evil must be prevented by the penitentiary and gallows, and not by a general deprivation of constitutional privilege'. In *Cockrum v. State of Texas* (1859) the court ruled that 'The right of a citizen to bear arms, in lawful defense of himself or the State, is absolute. He does not derive it from the State government. It is one of the "high powers" delegate directly to the citizen, and is excepted out of the general powers of government.' A law cannot be passed to infringe upon or impair it, because [the Constitution] is above the law, and independent of the lawmaking power.'

Given these court cases and historical analysis the Second Amendment recognizes the individual's right to self-defense; a free person is entitled to defend themselves from harm or mortal peril. Therefore, Board of Regents policy and regulations that prohibit the right to and bear arms are unconstitutional.

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Facts and Statistics concerning firearm use and concealed carry: For clarity, the facts and stats I am referencing are on BASIS and available to the public. There are now 41 Right to Carry States, 38 are shall issue.

Since 1991, when the nation's violent crime rate peaked, 24 states have adopted shall issue laws,

meanwhile gun laws have become more liberal on the federal and state level, and private ownership of firearms has risen by about 100 million guns. Subsequently, as of 2010 the murder rate has decreased 52% a 47 year low, and the total violent crime rate has decreased 48% to a 37 year low. Allowing citizens to carry concealed weapons deters crime. Studying every county in the US, economist John Lott and David Muste concluded that violent crime is deterred because of RTC. When concealed handgun laws went into effect in a county, murder rates fell by 8.5%, rapes rates fell by 5% and aggravated assault rates fell by 8%.

In the 1990s criminologist Gary Kleck and Marc Gertz found that guns were used for self-protection between 21.-2.5 million times annually. A study conducted for the Justice Department found that 34% of felons had been scared off, shot, wounded or captured by an armed victim, the study also found that 40% didn't commit crimes because they feared victims were armed. Evidence does not exist showing that gun control laws reduce crime. Using Kleck's numbers, of those 2.5 million times a gun is by law-abiding citizens for self-defense, less than 8% of the time a citizen kills or wounds his/her attacker. It is important to note for Alaska because of our nation leading rape and sexual abuse rates- as many as 200,000 women use a gun every year to defend themselves against sexual abuse.

Nationwide over ½ million self-defense uses away from home- these would be attributed to concealed carry. Handguns are the weapon of choice. They are used 1.9 million times a year to protect citizens. The courts have ruled that the police do not have an obligation to protect individuals; they protect the public in general. In about 75% of defensive firearm instances, a shot is never even fired and the threat is evaded via a defensive display or warning (from Gary Kleck study). Lott also found that in states adopting shall-issue carry laws, the incidence of mass murders drops on the order of 80%. Nearly every shootout between two armed individuals is over in roughly 10 seconds, mass shootings can exceed 30 minutes.

There has been a huge success in Florida concerning RTC and crime rates. Florida has issued the most carry

permits, nearly 2 million, but revoked only 168 (0.008%), due to gun crimes by permit holders. During the first 15 years of Florida's right to carry, their murder rate fell 52% during that time period, which put their rate below the national average.

2:43:12 PM

Warning of Arguments to Come: The committee might hear that 'Guns on campus will lead to more violent crime.' However, this is not the case. Since 2006 state law has allowed licensed individuals to carry concealed handguns on the campuses of Utah's public universities. This has also been the case at Colorado State Univ. and at Blue Ridge Community College in VA, over 100 semesters have passed and not a single instance of gun violence (including threats and suicides) an incident of a person brandishing or eluding a firearm in a threat- no firearm issues on these campuses.

The committee might hear that 'guns on campus will distract from the learning environment.' Again, this is not the case. The essence of carrying concealed is to be discrete and avoid attention. Furthermore, concealed carry does not distract people or increase crime throughout the rest of Alaska. Campuses are no more crowded than movie theaters, office buildings, shopping malls and numerous other locations where concealed carry is already occurring.

The committee might hear that 'because dorms experience fair amounts of theft the university has an obligation to ban firearms.' This is a weak argument and does not necessitate a prior restraint on our rights. Furthermore, the majority of students living on dorms or in residential units are not even of the legal age to possess a concealed firearm. Also, bolt down safes can be purchased. A study done at the University of Texas (with over 50,000 students) found that there would likely be no more than 10 to 20 concealed handgun license holders living on campus.

The emotionally charged argument that we must ban firearms from campuses to ensure healthy debate so that arguments don't turn into gun fights is not backed up by data on crime rates after concealed carry laws were passed. Law abiding adults exercising their

rights throughout the rest of Alaska are statistically unlikely to suddenly become emotional and lose their cool simply because they enter the grounds of a public university. We have seen no increases in violent crime from individuals carrying concealed firearms throughout the rest of Alaska.

For concerns about drug abuse and alcohol on campus-state law already makes it a crime to possess a concealed firearm while consuming liquor or consuming a controlled substance. Furthermore, drinking is more likely to occur off campus. Allowing firearms on campus would have no impact on the laws regulating concealed carry at bars and off-campus parties.

Two last arguments to be wary of. The idea that in an active shooter scenario the UPD would not be able to determine who is good guy vs. the bad guy; how does this necessitate a campus wide ban? What is morally worse, allowing a mass execution shooting to continue or give law-abiding adults the means to stop or slow the killer? Furthermore, there is no evidence to show that cops have had this problem outside of the university- most shootings/armed encounters occur one-on-one and not with police standing by. Most encounters last 10 seconds and the situation is over according to a 1997 FBI study; also the rate of carry of individuals in their 20s is about one half of one percent.

Finally, the idea that concealed carry cannot occur on campus because the university has visitors and students under the age of 18 is a moot point. These young members of society are always around individuals who are carrying concealed throughout the rest of Alaska. Law abiding adults carrying concealed are responsible and not dangerous throughout the rest of Alaska. The university's point that somehow these adults become threatening when stepping onto university property or in university buildings is completely baseless in fact and reason.

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CHAIR COGHILL thanked Mr. Rodvik.

MR. RODVIK concluded that SB 176 is requiring the Board of Regents to comply with the state constitution and state law. SB

176 recognizes the individual right to keep and bear arms for self-defense and the defense of others shall not be denied or infringed by a political subdivision of the state. SB 176 is supported by the state constitution, state law, court cases, historical analysis of the Second Amendment, and data on firearms and crime. He asked the committee to consider that the United States is ruled by law and not emotions. SB 176 restores the rule of law to Alaska.

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PAT GAMBLE, President, University of Alaska System, Anchorage, Alaska, testified in opposition to SB 176. He began by saying he is not a lawyer and did not want to talk about the Second Amendment. He provided his extensive history of gun experience and ownership and as an installation commander in the Air Force, where he was responsible for the protection of an installation, which comes into play in this discussion.

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PRESIDENT GAMBLE maintained that the issue is not the Second Amendment and the two categories of people surrounding it, the collective rights folks and the standard model of folks - two opposing groups. He recalled some of the history of gun legislation.

PRESIDENT GAMBLE related that today he would look at the language in the legislation, state law, how the two come together, and what effect it has on the university as an educational institution. He pointed out that states differ in opinion about gun laws; their reasons and laws differ. He said it is his intention to focus on what is the right thing for Alaska. He noted that Alaska's gun laws are a combination of federal and state laws. The bottom line, in both cases, is that a person can possess a hand gun at age 18. With parent permission a person can possess a rifle or shotgun at age 16. A person can conceal carry at age 21.

PRESIDENT GAMBLE said the bill, as it is written, is not about concealed carry; the issue is the carrying of weapons. The university is an educational institution and is concerned with two things, to take care of students and to educate them. In the history of the Supreme Court there are limits to where a weapon can be carried for the good of the public. One exception is K-12 schools.

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PRESIDENT GAMBLE questioned whether the bill protects the university property or the students. He concluded that it was the students. He brought up the difficulty of protecting schools. He used the example of proposed legislation banning cell phones around schools in order to protect kids. He noted the numbers of K-12 students on campus every day, all year long - 15,000 to 20,000 total. Students of all ages attend summer programs and visit college libraries and those colleges are responsible for protecting those kids. He assumed that the university is going to be responsible for ensuring the safety of those kids if the bill passes.

PRESIDENT GAMBLE read from the bill: "The Second Amendment may not be abridged by the Board of Regents except as provided by statute" He said he didn't have an argument with not abridging Second Amendment rights, but that there may be a constitutional issue with the exception.

With regard to the Board of Regents ability to adopt and enforce policies, he said guns currently are allowed on campus, but they must be locked in a car. If someone has a gun on campus, they are instructed to lock it up. When this law is passed, the university will no longer be able to tell a student to lock up a gun, even if they are distraught or drunk. Until they commit a crime, the university cannot act. That is a problem, he said.

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PRESIDENT GAMBLE said the Alaska Constitution, in Article I, Section 19, guarantees the right of the individual to bear arms in defense of self and others. He said he can find no mention of "others" in the U.S. Constitution. That suggests that a person has the option to decide when it is ok to use a weapon to help someone else. The Stand Your Ground Law, when coupled with self-defense, is one type of scenario. The Stand Your Ground Law and deciding to go help others is another matter and needs clarification.

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MR. GAMBLE said the last point in the bill refers to firearms, not concealed carry, which allows for all types of firearms everywhere on campus. He noted the bill defines restricted access as not including common areas of ingress or egress open to the public. He pointed out that K-12 students are everywhere on campus in the summer. He questioned how to protect those students in the 16 campuses. He called it a huge undertaking. He said he would hire a company to provide protection and he would provide a fiscal note to that effect - a large fiscal note. He

stressed that it is a problem to claim that he can protect the campus. He said the solution is to kick the K-12 students off the campus and only have to worry about the professors and the college students.

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PRESIDENT GAMBEL concluded that state law protects K-12 students in their schools. He questioned whether K-12 students should be protected when they are on a university campus. He said the answer is yes.

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CHAIR COGHILL summarized that there is a practical problem, and a need for legal questions to be resolved, as well as the K-12 student issue to address. He said any time there is a constitutional question, it warrants a discussion. He thanked President Gamble for his testimony.

CHAIR COGHILL held SB 176 in committee.

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee at 3:04 p.m.