

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 17, 2017

1:35 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Mia Costello  
Senator Kevin Meyer  
Senator Pete Kelly  
Senator Bill Wielechowski

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 69

"An Act relating to misconduct involving weapons in the fifth degree; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 55

"An Act relating to criminal law and procedure; relating to controlled substances; relating to sentencing; relating to the period of probation; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to parole; relating to the duties of the Department of Corrections and the Department of Health and Social Services; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 69

SHORT TITLE: MISCONDUCT INVOLVING WEAPONS 5TH DEGREE

SPONSOR(s): SENATOR(s) EGAN

02/24/17	(S)	READ THE FIRST TIME - REFERRALS
02/24/17	(S)	JUD, FIN
03/15/17	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

03/15/17 (S) -- MEETING CANCELED --  
03/17/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

#### **WITNESS REGISTER**

SENATOR DENNIS EGAN  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 69.

JAMES DOOLEY, representing himself  
Juneau, Alaska

**POSITION STATEMENT:** Provided supporting testimony for SB 69.

QUINLAN STEINER, Public Defender  
Public Defender Agency  
Anchorage, Alaska

**POSITION STATEMENT:** Raised concerns with SB 69.

MAJOR JEFFREY LAUGHLIN, Deputy Director  
Alaska State Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 69.

#### **ACTION NARRATIVE**

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**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Costello, Wielechowski, Meyer, Kelly and Chair Coghill.

#### **SB 69-MISCONDUCT INVOLVING WEAPONS 5TH DEGREE**

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**CHAIR COGHILL** announced the consideration of SB 69 and noted that this is the first hearing. The intent is to introduce the bill, take questions and public testimony and hold the bill for further consideration.

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**SENATOR DENNIS EGAN**, Alaska State Legislature, sponsor of SB 69, said he introduced the legislation at the request of law

enforcement and as a matter of officer safety. He explained that current law provides that an individual who has contact with the police must inform the officer if they are carrying a firearm concealed. However, there is no such obligation if the firearm is concealed in an individual's vehicle and they are stopped by law enforcement. The bill extends the language for carrying a concealed firearm in a shoulder holster to include a firearm concealed in a vehicle. He noted that the packets contain information on how dangerous traffic stops can be for police and troopers.

SENATOR EGAN emphasized that the bill does not change who can exercise their constitutional right to carry a firearm, or when or where they can exercise that right. "It just lets police know when a firearm is part of the equation, so they can keep themselves safe."

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CHAIR COGHILL opened public testimony.

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JAMES DOOLEY, representing himself, Juneau, Alaska, reviewed his career in the U.S. Coast Guard as a federal law enforcement officer, his service with the Juneau Police Department, and his education that includes a master's degree in criminal justice and an advanced police certificate from the Alaska Police Standards Council. He shared that he likes to hunt and shoots recreationally and is in no way anti-gun, but he is testifying today to talk about a personal experience where a firearm was suddenly introduced.

He recounted that the situation occurred inside a residence where he and another officer went on a welfare check. The man they were checking on was reported to be drunk, high, have access to a firearm, and had threatened suicide. He invited the officers inside and proceeded to pull a gun from behind his back and wave it in the direction of both officers. Both officers pulled their guns but were able to secure the situation without injury to anyone. He said this is not the only incident where a firearm has come out without warning. He offered his belief that it makes for a much safer interaction for both officers and citizens if disclosure is a matter of routine and the element of surprise is eliminated.

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SENATOR WIELECHOWSKI asked if an officer can lawfully ask if there is a gun in the vehicle, and is there a punishment if the person is found to have lied.

MR. DOOLEY replied it isn't a rote part of every traffic stop but prudent officers probably would ask if they had reason to believe there was a gun that wasn't disclosed.

CHAIR COGHILL talked about attending trooper training exercises about when to shoot and when not to shoot. There was a video series of different encounters where there was a split second to decide whether deadly force is warranted. He spoke of the importance of striking a balance between personal safety and the power of the state.

He asked Officer Dooley his perspective on how Alaska's concealed carry law is working.

MR. DOOLEY said there is some lack of awareness about the prudence of disclosing a firearm anytime an individual has contact with law enforcement. There are also many prudent gun owners that disclose, and it adds no adrenalin to the contact.

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SENATOR COSTELLO asked how the bill would change his behavior on a routine stop if he determined the driver was lying about being in possession of a firearm.

MR. DOOLEY said the bill would not change an officer's search authorities.

CHAIR COGHILL said the committee will consider an officer's right to be safe while enforcing the law and an individual's right to live peaceably without undue interference from the state.

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SENATOR COSTELLO asked how this bill would affect a traffic stop where a passenger with a concealed carry permit doesn't disclose and the driver is unaware there is a gun in the vehicle.

CHAIR COGHILL redirected the question and asked what officers are currently instructed to do when both the driver and a passenger have a concealed carry permit.

MR. DOOLEY clarified that Alaska law treats concealed carry with and without a permit the same. Both the driver and passenger

would be obliged to disclose if they have a gun on their person and they have contact with law enforcement; the bill doesn't change that. He demonstrated what he does as a private citizen when he is contacted by law enforcement.

CHAIR COGHILL thanked Officer Dooley for taking personal time to testify.

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QUINLAN STEINER, Public Defender, Public Defender Agency, said the primary concern with SB 69 relates to a lack of notice to the public that an affirmative duty exists. That raises practical as well as constitutional concerns.

The constitutional concern relates to the lack of notice. He explained that the constitution generally prohibits criminalizing a duty to act when there hasn't been notice. In this case there is essentially no notice to the public that this duty exists. He mentioned the concealed carry permit law, its requirements and affirmative duties and the fact that it raised a constitutional question that hasn't been litigated or addressed by the appellate courts in the state.

MR. STEINER said the bill also raises a Fifth Amendment question if someone is required to make a disclosure that in and of itself might be an admission of a crime. He said that question exists with the current statute and isn't raised specifically by this amendment, but it exists. He said the practical concern related to this notice is that the public doesn't know, and otherwise law-abiding citizens may unknowingly commit a crime. That won't effectuate the policy that's at issue, which is to have the existence of a weapon made known to ensure the safety of the situation.

He suggested potential fixes: require the officer to ask the person if they have a weapon in the vehicle and notify them of their obligation to disclose; write such obligations into drivers' licenses; and make it a violation not to disclose. He noted that the prohibition on requiring affirmative action isn't implicated in a violation; it's implicated in criminal statutes.

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CHAIR COGHILL asked if an officer who comes to the door without a warrant has the right to ask an individual if there are firearms in the house.

MR. STEINER said there is no prohibition about asking and the individual is free to answer as they see fit. However, the requirement in existing statute regarding weapons on your person raises the issue about criminal liability for failure to respond appropriately.

CHAIR COGHILL clarified that the bill is restricted to concealed carry in a vehicle.

MR. STEINER agreed and added that the proposed amendment mirrors existing statute regarding concealed on your person. He noted that the concealed weapons permit law that was repealed required disclosure when interacting with a police officer. That left open the question about whether the current statute is constitutional.

CHAIR COGHILL asked if the Fifth Amendment right he mentioned was the right not to incriminate oneself.

MR. STEINER answered yes. If a person is required to disclose and they are intoxicated they would essentially be admitting to a crime. He cited another example of a youth in possession of a concealed weapon. The individuals would be able to contest the charge and investigation based on Fifth Amendment grounds.

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CHAIR COGHILL asked about the right of a police officer to defend him/herself when they ask someone if they have a weapon.

MR. STEINER replied the policy at issue makes sense because it promotes public safety. Letting people know they're obligated to answer the question and allow the officer to secure the weapon would promote that policy.

SENATOR COSTELLO asked for examples of misconduct involving a weapon in the fifth degree.

MR. STEINER cited the following examples of class B misdemeanor misconduct: failure upon initial contact to inform a police officer you are carrying a deadly weapon concealed on your person; concealing a weapon on your person within somebody's residence without their express permission; possessing a loaded firearm in any place where intoxicating liquor is sold; and an un-emancipated minor under age 16 carrying a concealed firearm on their person.

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SENATOR WIELECHOWSKI asked if there is an existing prohibition against a police officer asking about the presence of a firearm during a traffic stop.

MR. STEINER replied he's not aware of a prohibition and believes it happens frequently.

SENATOR WIELECHOWSKI asked if lying to a police officer about having a firearm under the car seat carries a penalty.

MR. STEINER offered to follow up after doing some research.

SENATOR WIELECHOWSKI asked if he has any Fourth Amendment concerns with the provision that allows a police officer to secure a firearm.

MR. STEINER said he intends to look at that further, but it potentially presents issues if in the process of securing the weapon the officer sees contraband that may cause a further investigation.

SENATOR WIELECHOWSKI asked: 1) if the interior of a vehicle would include the trunk; and 2) if the obligation to disclose a weapon in a vehicle extends to a passenger.

MR. STEINER said he doesn't believe the interior of a vehicle would include the trunk, just what is reachable within the vehicle. The duty to disclose arguably would apply to a passenger, but it's unclear in the statute.

SENATOR WIELECHOWSKI said he assumes it would be a knowing standard.

MR. STEINER confirmed the statute requires a knowing mens rea. Honest forgetfulness would probably qualify as knowingly, but it could be used as a defense.

SENATOR WIELECHOWSKI asked if the court defines "immediately inform the peace officer" as a reasonable standard.

MR. STEINER said he believes it's a reasonable standard under the circumstances. It's not a specific timeframe.

SENATOR WIELECHOWSKI asked how a court might interpret the phrase.

MR. STEINER opined that it would be that notification about a weapon in the car would be one of the first things you did after being contacted. Notifying an officer after he/she returned to their vehicle and then came back would likely be a violation of the statute.

CHAIR COGHILL said his interpretation is first contact.

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MAJOR JEFF LAUGHLIN, Deputy Director, Alaska State Troopers, Department of Public Safety (DPS), introduced himself and offered to answer questions.

CHAIR COGHILL asked what the procedure is under existing law if there is more than one person in the vehicle and one of them fails to disclose.

MR. LAUGHLIN responded that the troopers support the bill because under existing law there is not a duty to disclose the presence of a firearm in a vehicle unless it is concealed on the driver's person or the passenger's person.

CHAIR COGHILL asked if it would be clarifying to stipulate a firearm in a vehicle that is within reach as opposed to within the interior of a vehicle.

MR. LAUGHLIN said it could be helpful to the bill. He advised that in other areas of the law the terminology generally used by law enforcement is "within lunge, reach, or grasp." He agreed with earlier testimony that the current language wouldn't apply to the trunk.

CHAIR COGHILL asked if the current protocol is to ask on initial contact if there is a firearm in the vehicle or on the person.

MR. LAUGHLIN said that as a general rule he won't ask about firearms or anything else in a vehicle unless he has a reasonable suspicion that something is going on.

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CHAIR COGHILL held SB 69 in committee for further consideration with public testimony open.

2:19:22 PM

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:19 p.m.