

CS FOR SENATE BILL NO. 237(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 2/23/94
Referred: JUD, FIN

Sponsor(s): SENATORS LEMAN, Phillips

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the possession of firearms by minors, offenses involving
2 weapons, and permits for the carrying of concealed weapons."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 11.61.210 is amended by adding new subsections to read:

5 (d) In a prosecution under (a)(6) of this section involving the sale of a firearm,
6 it is a defense that, at the time of the sale, the person under 18 years of age was
7 accompanied by the person's parent or guardian.

8 (e) In a prosecution under (a)(6) of this section involving the sale of a firearm,
9 it is an affirmative defense that the sale was made to a person under 18 years of age
10 as to whom, at the time of the sale, the disabilities of minority had been removed
11 under AS 09.55.590 or under AS 25.20.020.

12 * Sec. 2. AS 11.61.220(a) is amended to read:

13 (a) A person commits the crime of misconduct involving weapons in the fifth
14 degree if the person

1 (1) knowingly possesses a deadly weapon, other than an ordinary
2 pocketknife or a defensive weapon, that is concealed on the person;

3 (2) knowingly possesses a loaded firearm on the person in any place
4 where intoxicating liquor is sold for consumption on the premises;

5 (3) being an unemancipated minor [UNDER 16 YEARS OF AGE],
6 possesses a firearm without the consent of a parent or guardian of the minor;

7 (4) knowingly possesses a firearm

8 (A) or a defensive weapon within the grounds of or on a
9 parking lot immediately adjacent to a public or private preschool, elementary,
10 junior high, or secondary school without the permission of the chief
11 administrative officer of the school or district or the designee of the chief
12 administrative officer, except that a person 21 years of age or older may
13 possess

14 (i) an unloaded firearm in the trunk of a motor vehicle
15 or encased in a closed container in a motor vehicle;

16 (ii) a defensive weapon; or

17 (B) within the grounds of or on a parking lot immediately
18 adjacent to a center, other than a private residence, licensed under
19 AS 47.35.010 - 47.35.075 or recognized by the federal government for the care
20 of children; or

21 (5) possesses or transports a switchblade or a gravity knife.

22 * Sec. 3. AS 11.61.220(b) is amended to read:

23 (b) In a prosecution under (a)(1) of this section, it is an affirmative defense
24 that the defendant, at the time of possession, was

25 (1) in the defendant's dwelling or on land owned or leased by the
26 defendant appurtenant to the dwelling; [OR]

27 (2) actually engaged in lawful hunting, fishing, trapping, or other lawful
28 outdoor activity that necessarily involves the carrying of a weapon for personal
29 protection; or

30 (3) the holder of a permit to carry a concealed weapon under
31 AS 18.65.700 - 18.65.775 and the deadly weapon was not a shotgun, a rifle, or a

1 prohibited weapon as defined in AS 11.61.200.

2 * Sec. 4. AS 11.61.220(d) is amended to read:

3 (d) In a prosecution under (a)(2) of this section, it is a defense that the
4 defendant, at the time of possession, [WAS]

5 (1) was on business premises owned by or leased by the defendant;

6 [OR]

7 (2) was on business premises in the course of the defendant's
8 employment for the owner or lessee of those premises; or

9 (3) held a valid permit issued under AS 18.65.700 - 18.65.775 to
10 possess a concealed weapon and, while carrying the concealed weapon and the
11 permit for its possession, was in a restaurant or eating place licensed under
12 AS 04.11.100 to sell beer and wine for consumption on the licensed premises.

13 * Sec. 5. AS 11.61.220(g) is amended to read:

14 (g) Except as provided in (i) of this section, misconduct [MISCONDUCT]
15 involving weapons in the fifth degree is a class B misdemeanor.

16 * Sec. 6. AS 11.61.220 is amended by adding new subsections to read:

17 (h) The provisions of (a)(3) of this section do not apply to a person under 18
18 years of age in possession of a firearm if the person possesses the firearm

19 (1) at an established and lawfully operated range or target concession
20 for the purpose of firing at targets at the range or concession;

21 (2) while in attendance at a hunter safety course or firearm safety
22 course for the purpose of using the firearm in conjunction with lessons presented
23 during that course;

24 (3) while engaged in organized competition involving use of the
25 firearm, or while practicing for an organized competition in which the person plans to
26 participate;

27 (4) on premises owned by or leased by another with the consent of the
28 owner or lessee of those premises;

29 (5) while actually engaged in lawful

30 (A) hunting; or

31 (B) fishing, trapping, or other lawful outdoor activity if the

1 fishing, trapping, or other lawful outdoor activity necessarily involves the
2 carrying of a weapon for personal protection; or
3 (6) while traveling to or from any activity described in (1) - (5) of this
4 subsection.

5 (i) A person convicted under (a)(3) of this section is guilty of a

6 (1) class B misdemeanor if the conviction is the person's first
7 conviction of the offense described in (a)(3) of this section and the person had not
8 been previously convicted under a law or ordinance of another jurisdiction with
9 elements substantially similar to those of an offense described in (a)(3) of this section
10 or adjudicated a delinquent minor under AS 47.10.010 - 47.10.142 for a violation of
11 (a)(3) of this section;

12 (2) class A misdemeanor if, within the preceding seven years, the
13 person was convicted under (a)(3) of this section or under a law or ordinance of
14 another jurisdiction with elements substantially similar to those of an offense described
15 in (a)(3) of this section, or the person was adjudicated a delinquent minor either under
16 AS 47.10.010 - 47.10.142 if the delinquency finding is based upon a violation of (a)(3)
17 of this section or under a law of another jurisdiction authorizing adjudication of
18 delinquency for the violation of a law or ordinance of that jurisdiction with elements
19 substantially similar to those of an offense described in (a)(3) of this section.

20 * Sec. 7. AS 18.65 is amended by adding new sections to read:

21 ARTICLE 9. PERMIT TO CARRY A CONCEALED WEAPON.

22 Sec. 18.65.700. PERMIT TO CARRY A CONCEALED WEAPON. (a) The
23 department shall issue a permit to carry a concealed weapon to a person who

24 (1) applies in person at an office of the Alaska State Troopers;

25 (2) qualifies under AS 18.65.705;

26 (3) submits a completed application on a form provided by the
27 department, that provides the information required under AS 18.65.705 and 18.65.710
28 and is executed under oath;

29 (4) permits the Alaska State Troopers to take two sets of fingerprints
30 of the person and, on a blank permit, a print of one finger of each hand; and

31 (5) pays the application fee required by AS 18.65.715.

1 (b) The department shall either approve or reject an application for a permit to
2 carry a concealed weapon within 45 days of receipt of the application. The department
3 shall notify the applicant in writing of the reason for a rejection.

4 (c) A permit issued under this section is valid for five years from the date of
5 issue.

6 Sec. 18.65.705. QUALIFICATIONS TO OBTAIN A PERMIT. A person is
7 qualified to receive and hold a permit to carry a concealed weapon if the person

8 (1) is 21 years of age or older;

9 (2) is eligible to own or possess a firearm under the laws of this state
10 and under federal law;

11 (3) is not currently charged under a complaint, information, indictment,
12 or presentment with a violation of AS 11.41 or a similar law of another jurisdiction;

13 (4) has not been voluntarily or involuntarily committed to a treatment
14 facility for a mental illness, unless the person presents to the department a sworn
15 statement of

16 (A) an official in charge of the facility certifying that the person
17 has been released from the facility for at least the five years immediately
18 preceding the application and that at the time of release the person was not
19 suffering from the condition that led to the commitment; and

20 (B) a psychiatrist who has treated the person certifying that the
21 person has not suffered from the condition that led to the commitment during
22 the five years immediately preceding the application;

23 (5) has not been adjudicated as mentally incapacitated by a court of this
24 state, another state, territory, or jurisdiction, or of the United States, unless the
25 guardianship or similar arrangement has been closed or terminated and five years have
26 elapsed since the closure or other termination;

27 (6) is a resident of the state and has been for the 12 months
28 immediately preceding the application for a permit;

29 (7) has not been convicted of an unlawful use of a controlled substance
30 during the five-year period immediately preceding submission of the application;

31 (8) has not been discharged from the armed forces of the United States

1 under dishonorable conditions;

2 (9) is not an alien who is residing in the United States illegally or a
3 former citizen of the United States who has renounced the person's citizenship;

4 (10) is not now in and has not previously entered an alcohol treatment
5 program, unless the person presents the department with a sworn statement of a
6 medical or psychological professional that the person has undergone treatment for
7 alcohol abuse and has demonstrated freedom from alcohol impairment for the five
8 years immediately preceding the application; and

9 (11) has not been convicted of two violations of AS 28.33.030,
10 28.33.031, AS 28.35.030, or 28.35.032 or similar laws of another jurisdiction within
11 the five years immediately preceding the application.

12 Sec. 18.65.710. APPLICATION FOR PERMIT TO CARRY A CONCEALED
13 WEAPON. (a) The application for a permit to carry a concealed weapon must, at a
14 minimum, include

15 (1) the applicant's name, address, place and date of birth, physical
16 description, including height, weight, race, hair color, and eye color, and social security
17 number;

18 (2) a statement that the applicant qualifies under AS 18.65.705;

19 (3) a statement that the applicant has been furnished with a copy of
20 AS 18.65.700 - 18.65.775, has read those sections, and understands them;

21 (4) a statement that the applicant desires a permit to carry a concealed
22 weapon for a lawful purpose, which may include lawful self-defense;

23 (5) a sworn statement by the applicant that all statements, answers, and
24 attachments to the application are true and complete;

25 (6) a conspicuous warning that the application is executed under oath
26 and that an applicant who supplies a false statement, answer, or document, in
27 connection with the application which the applicant does not believe to be true, may
28 be prosecuted for perjury under AS 11.56.200 and, if found guilty, may be punished
29 for violation of a class B felony, and that in such cases the permit shall be revoked
30 and the applicant may be barred from any further application for a permit; and

31 (7) a statement that the applicant understands that a background

1 investigation may be conducted as a part of the application process, that this may
2 involve computerized records searches, and that the applicant authorizes the
3 investigation.

4 (b) As a part of an application under (a) of this section, the department may
5 not inquire of an applicant as to any firearms owned by the applicant.

6 Sec. 18.65.715. FEES. (a) The department shall charge a nonrefundable fee
7 of \$100 for application for and initial issuance of a permit.

8 (b) The department shall charge a fee of \$15 for the renewal of a permit under
9 AS 18.65.720.

10 (c) The department shall charge a fee of \$15 for replacement of a permit under
11 AS 18.65.725.

12 Sec. 18.65.720. PERMIT RENEWAL. (a) A permittee shall apply for
13 renewal of a permit to carry a concealed weapon within 90 days before the expiration
14 of the permit on a form provided by the department. The renewal form shall be
15 submitted under oath and must include

16 (1) any change in the information originally submitted under
17 AS 18.65.710;

18 (2) a statement that the person remains qualified to receive and hold
19 a permit to carry a concealed weapon under AS 18.65.705; and

20 (3) the renewal fee required under AS 18.65.715.

21 (b) A renewal of a permit to carry a concealed weapon submitted on or after
22 the expiration date is subject to a late fee of \$15. The department may not accept a
23 renewal for a permit that is submitted more than 90 days after the expiration date of
24 the permit. Nothing in this subsection prohibits the holder of an expired permit from
25 applying for a new permit.

26 Sec. 18.65.725. REPLACEMENT OF PERMIT. The department may replace
27 a permit that the permittee certifies under oath has been lost, stolen, or destroyed.

28 Sec. 18.65.730. SUSPENSION OF PERMIT. The department shall
29 immediately suspend a permit to carry a concealed weapon if a permittee is arrested
30 for or formally charged with a crime that would disqualify the permittee under
31 AS 18.65.705(3) from being eligible to hold a permit to carry a concealed weapon.

1 A suspension of a permit remains in effect until the permit is revoked under
2 AS 18.65.735 or the department has been notified of a disposition favorable to the
3 defendant or the defendant has been released from custody without being charged. In
4 this section, "disposition favorable to the defendant" means an adjudication by a court
5 other than a conviction or a dismissal by the prosecutor.

6 Sec. 18.65.735. REVOCATION OF PERMIT; APPEAL. (a) A permit to
7 carry a concealed weapon shall be immediately revoked by the department when the
8 permittee

9 (1) becomes disqualified to receive and hold a permit under
10 AS 18.65.705, other than AS 18.65.705(3);

11 (2) is convicted of three violations of AS 18.65.750 or 18.65.755 within
12 a five-year period;

13 (3) is convicted of violating AS 28.33.030, 28.33.031, AS 28.35.030,
14 or 28.35.032 and was carrying a concealed weapon at the time of the violation; or

15 (4) with intent to mislead the department or its employees, supplied a
16 false or fraudulent answer, statement, or document, or made a material misstatement
17 or omission, in connection with an application for a permit or renewal of a permit.

18 (b) A person whose permit is revoked under this section may appeal the
19 revocation decision to the commissioner. A person may seek judicial review of the
20 decision of the commissioner under AS 44.62.560 - 44.62.570.

21 (c) A person whose permit is revoked under (a)(2) - (4) of this section may
22 not apply for a new permit until at least five years have elapsed since the date of the
23 last conviction.

24 Sec. 18.65.740. NO LIABILITY FOR ISSUANCE OF PERMIT. The state is
25 not liable by virtue of having issued a permit to carry a concealed weapon for damage
26 or harm caused by the permittee.

27 Sec. 18.65.750. POSSESSION AND DISPLAY OF PERMIT. (a) A permittee
28 who is carrying a concealed weapon shall

29 (1) carry the permit at all times the permittee carries the concealed
30 weapon;

31 (2) whenever contact is made with a peace officer, notify the peace

1 officer that the permittee possesses the concealed weapon and a permit to carry the
2 weapon; and

3 (3) display both the permit and other proper identification when asked
4 to do so by a peace officer at any time the permittee is carrying the concealed weapon.

5 (b) A person who violates (a) of this section is guilty of a violation and shall
6 be punished by a fine of \$25.

7 Sec. 18.65.755. PLACES WHERE PERMITTEE MAY NOT POSSESS A
8 CONCEALED WEAPON. (a) A permittee may not carry a concealed weapon into
9 a law enforcement or correctional facility; a courthouse or a courtroom; a passenger
10 loading or unloading area of an airline terminal; or a vessel of the Alaska marine
11 highway system.

12 (b) In addition to any other penalty provided by law, a person who violates
13 this section is guilty of a class B misdemeanor.

14 Sec. 18.65.760. COMPILATION AND MAINTENANCE OF LIST OF
15 PERMITTEES; ACCESS TO LIST. (a) The department shall compile and maintain
16 a list of permittees in a manner that allows immediate access to the information by
17 peace officers.

18 (b) Except for access by peace officers under (a) of this section, the list of
19 permittees compiled and maintained under (a) of this section is confidential and may
20 not be inspected by the public.

21 Sec. 18.65.765. REGULATIONS. The department shall adopt regulations to
22 implement AS 18.65.700 - 18.65.775. This section does not delegate to the department
23 the authority to regulate or restrict the issuing of permits beyond those provisions
24 contained in AS 18.65.700 - 18.65.775. Subjective or arbitrary actions or regulations
25 that encumber the issuing process by placing burdens on the applicant beyond those
26 sworn statements and specified documents detailed in AS 18.65.700 - 18.65.775 or that
27 create restrictions beyond those specified or specifically authorized in AS 18.65.700 -
28 18.65.775 are prohibited.

29 Sec. 18.65.770. PROHIBITION ON CERTAIN ORDINANCES. A
30 municipality may not enact an ordinance that conflicts with or imposes stricter
31 standards than the requirements of this chapter.

1 Sec. 18.65.775. DEFINITIONS. In AS 18.65.700 - 18.65.775,
2 (1) "commissioner" means the commissioner of public safety;
3 (2) "concealed weapon"
4 (A) means a deadly weapon, as defined in AS 11.81.900, that
5 is covered or enclosed in any manner so that an observer cannot determine that
6 it is a weapon without removing it from that which covers or encloses it or
7 without opening, lifting, or removing that which covers or encloses it;
8 (B) does not include
9 (i) a deadly weapon that is a prohibited weapon as
10 defined in AS 11.61.200; or
11 (ii) a shotgun or rifle;
12 (3) "department" means the Department of Public Safety;
13 (4) "permit" means a permit to carry a concealed weapon issued under
14 AS 18.65.700 - 18.65.775.

15 * Sec. 8. AS 47.10.010 is amended by adding a new subsection to read:

16 (e) The procedures prescribed in AS 47.10.020 - 47.10.090 and the Alaska
17 Delinquency Rules do not apply when a minor who is at least 14 years of age at the
18 time of the alleged offense is charged with an offense, the minor is alleged to have
19 used a firearm in the commission of the offense, and the minor has been previously
20 adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as
21 a result of an offense that, in this or another jurisdiction, involves the use of a firearm
22 in the commission of the offense. The minor shall be charged, prosecuted, and
23 sentenced in the superior court in the same manner as an adult. In this subsection,
24 "firearm" has the meaning given in AS 11.81.900.

25 * Sec. 9. AS 47.10.080(b) is amended to read:

26 (b) If the court finds that the minor is delinquent, it shall
27 (1) order the minor committed to the department for a period of time
28 not to exceed two years or in any event extend past the day the minor becomes 19,
29 except that the department may petition for and the court may grant in a hearing (A)
30 two-year extensions of commitment that do not extend beyond the child's 19th
31 birthday if the extension is in the best interests of the minor and the public; and (B)

1 an additional one-year period of supervision past age 19 if continued supervision is in
2 the best interests of the person and the person consents to it; the department shall place
3 the minor in the juvenile facility that the department considers appropriate and that
4 may include a juvenile correctional school, juvenile work camp, detention home, or
5 detention facility; the minor may be released from placement or detention and placed
6 on probation on order of the court and may also be released by the department, in its
7 discretion, under AS 47.10.200;

8 (2) order the minor placed on probation, to be supervised by the
9 department, and released to the minor's parents, guardian, or a suitable person; if the
10 court orders the minor placed on probation, it may specify the terms and conditions
11 of probation; the probation may be for a period of time, not to exceed two years and
12 in no event extend past the day the minor becomes 19, except that the department may
13 petition for and the court may grant in a hearing

14 (A) two-year extensions of supervision that do not extend
15 beyond the child's 19th birthday if the extension is in the best interests of the
16 minor and the public; and

17 (B) an additional one-year period of supervision past age 19 if
18 the continued supervision is in the best interests of the person and the person
19 consents to it;

20 (3) order the minor committed to the department and placed on
21 probation, to be supervised by the department, and released to the minor's parents,
22 guardian, other suitable person, or suitable nondetention setting such as a family home,
23 group care facility, or child care facility, whichever the department considers
24 appropriate to implement the treatment plan of the predisposition report; if the court
25 orders the minor placed on probation, it may specify the terms and conditions of
26 probation; the department may transfer the minor, in the minor's best interests, from
27 one of the probationary placement settings listed in this paragraph to another, and the
28 minor, the minor's parents or guardian, and the minor's attorney are entitled to
29 reasonable notice of the transfer; the probation may be for a period of time, not to
30 exceed two years and in no event extend past the day the minor becomes 19, except
31 that the department may petition for and the court may grant in a hearing

1 (A) two-year extensions of commitment that do not extend
2 beyond the child's 19th birthday if the extension is in the best interests of the
3 minor and the public; and

4 (B) an additional one-year period of supervision past age 19 if
5 the continued supervision is in the best interests of the person and the person
6 consents to it;

7 (4) order the minor to make suitable restitution in lieu of or in addition
8 to the court's order under (1), (2), or (3) of this subsection;

9 (5) order the minor committed to the department for placement in an
10 adventure based education program established under AS 47.21.020 with conditions
11 the court considers appropriate concerning release upon satisfactory completion of the
12 program or commitment under (1) of this subsection if the program is not satisfactorily
13 completed; [OR]

14 (6) in addition to an order under (1) - (5) of this subsection, if the
15 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
16 11.71.040(a)(4), order the minor to perform 50 hours of community service; for
17 purposes of this paragraph, "community service" includes work

18 (A) on a project identified in AS 33.30.901; or

19 (B) that, on the recommendation of the city council or
20 traditional village council, would benefit persons within the city or village who
21 are elderly or disabled; or

22 (7) in addition to an order under (1) - (5) of this subsection, if the
23 delinquency finding is based on the minor's violation of AS 11.61.220(a)(3), revoke
24 the minor's driver's license, privilege to drive, or privilege to obtain a driver's
25 license for a period of

26 (A) one year, if the delinquency finding is based on the
27 minor's first violation of AS 11.61.220(a)(3); and

28 (B) two years and, in addition, order the minor to perform
29 100 hours of community service, if the delinquency finding is based on the
30 minor's second or subsequent violation of AS 11.61.220(a)(3); for purposes
31 of this subparagraph, "community service" includes work described in

1 (6)(A) - (B) of this subsection.

2 * **Sec. 10. APPLICABILITY.** (a) Sections 1 - 6, 8, and 9 of this Act apply to offenses
3 committed on or after the effective date of this Act.

4 (b) In

5 (1) AS 11.61.220(i), added by sec. 6 of this Act, reference to previous
6 convictions or adjudications of delinquency under AS 47.10.010 - 47.10.142 does not include
7 convictions or adjudications of delinquency under AS 11.61.220(a)(3) as it read before its
8 amendment by sec. 2 of this Act;

9 (2) AS 47.10.010(e), added by sec. 8 of this Act, reference to previous
10 convictions or adjudications of delinquency does not include convictions or adjudications of
11 delinquency involving the minor that occurred before the effective date of this Act;

12 (3) AS 47.10.080(b)(7), added by sec. 9 of this Act, reference to the minor's
13 second or subsequent violation of AS 11.61.220(a)(3) does not include a violation of
14 AS 11.61.220(a)(3) as it read before its amendment by sec. 2 of this Act.