

HB

647

Alaska State Legislature

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VICE-CHAIRMAN
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MEMBER
Resources
Rules
Finance — Sub. Com. Labor

Rep. . sentative Jonn J. Liska

April 11, 1984

MEMORANDUM

FROM: Rep. John J. Liska

REFERENCE: HB 647, "An act relating to the possession of concealed weapons."

The purpose of HB 647 is to give the citizens of Alaska a method to apply for a permit to carry a concealed weapon.

Presently, Alaska Statutes permit only Police Officers to carry concealed weapons. There may be instances when a citizen would be justified in carrying a concealed weapon.

I feel this is an issue which needs to be addressed and HB 647 is a vehicle for that discussion.

Anchorage has the highest rape rate of any city - Nation wide. More criminals are incarcerated in Alaska per population than any other state. The fact that the police do not have to protect the individual, as shown in Warren vs. District of Columbia.

The above are just some of the facts that should be considered while discussing this bill.

Enclosed is the following:

- A. Alaska Statutes 11.61.200 and 18.67.162
- B. Model Concealed Weapons legislation.
- C. Warren vs Dist. of Columbia. Police not required to protect individual citizen.
- D. Oregon Statute 166.240 carrying of Concealed Weapons
- E. Utah - carrying Concealed Weapons
- F. Washing ton - 9.41.050 carrying pistol

HB 647 cont.
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Page two

- G. House Research Information - 33 states allow citizens to carry concealed weapons in some circumstances.
- H. Letter from office of District Attorney Las Vegas, Nevada.
Population 463,087/Permits issued 639
.0013% of their population received permits
- I. Letters regarding body guard from Commissioner Sundberg and Mr. Berrier.
- J. Letters of support in Rep. Liska's File.

JJL/tm

§ 18.67.162

HEALTH AND SAFETY

§ 18.80.050

Effect of amendments. — The 1983 amendment, in subsection (a), added the paragraph (1) and (2) designations, added paragraph (3), and made minor word changes. In subsection (b), the amendment

repealed paragraphs (1) and (2) and inserted "by the offender while intoxicated or" in paragraph (4). In subsection (c), the amendment deleted the former last sentence and made a minor word change.

Sec. 18.67.162. Crime victim compensation fund. There is created a crime victim compensation fund which shall be administered by the Violent Crimes Compensation Board. The fund consists of money appropriated to it by the legislature. The fund shall be administered in accordance with the provisions of this chapter. Money distributed from the fund shall be in addition to other sources of compensation provided in this chapter. (§ 7 ch 96 SLA 1983)

New Section 18.67.010

Chapter 80. State Commission for Human Rights.

Article

1. Creation and Organization of Commission (§ 18.80.060)

NOTES TO DECISIONS

Alaska's civil rights statute should be broadly construed to further the goal of eradication of discrimination. Alaska

USA Fed. Credit Union v. Fridrikson, Sup. Ct. Op. No. 2478 (File No. 5230), 642 P.2d 804 (1982).

Article 1. Creation and Organization of Commission.

Section

60. Powers and duties of the commission

Sec. 18.80.010. Creation.

NOTES TO DECISIONS

Cited in *McDaniel v. Cory*, Sup. Ct. Op. No. 2383 (File Nos. 4793, 4794), 631 P.2d 82 (1981).

Sec. 18.80.070. Regulations.

NOTES TO DECISIONS

Quoted in *Borkowski v. State*, Sup. Ct. Op. No. 2688 (File No. 6541), P.2d (1983).

(b) It is an affirmative defense to a prosecution under (a),
section that

(1) the defendant took reasonable steps to remove the
from the highway; and

(2) no person suffered physical injury as a result of the presence
the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 of
SLA 1978)

Collateral references. -- 39 Am. Jur.
2d, Highways, Streets and Bridges,
§§ 281-310.

39A C.J.S., Highways, §§ 217-231.

Article 2. Weapons and Explosives.

Section	Section
200. Misconduct involving weapons in the first degree	230. Possession of burglary tools
210. Misconduct involving weapons in the second degree	240. Criminal possession of explosives
220. Misconduct involving weapons in the third degree	250. Unlawful furnishing of explosives

Collateral references. -- Validity and
construction of gun control laws, 28
ALR3d 845.

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

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(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a)(1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

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Code of Criminal
Procedure

Title 13
Decedent's Estates
Guardianships and Trusts

Editor's notes. — The cases cited in the notes below were found in the following AS 11:35 030 and 11:35 040.

Constitutionality of former statute prohibiting possession by a convict. — See *United States v. Farwell*, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

Legislative intent. — The purpose of the felon in possession statute was to prevent the concealment and use of firearms in violent crime. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Former section included crime committed in another state. — See *United States v. Farwell*, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

The term "concealed" means that the weapon is not discernible through ordinary observation by persons coming into proximity with the person carrying it, as persons do in the ordinary and usual associations of life. *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

A weapon is concealed if it is hidden from ordinary observation. It need not be absolutely invisible to other persons. *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Actual possession was not required under former statute. — See *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); *Gordon v. State*, Sup. Ct. Op. No. 1126 (File No. 2204), 533 P.2d 25 (1975).

A revolver need not be fully assembled or immediately capable of firing in order to qualify as a weapon. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other

grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

And it is immaterial whether the gun is loaded and ready for immediate use. — See *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Furnishing ammunition included under former statute. — See *In re Robson*, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978).

It was necessary to show a prior conviction in order to prove one essential element of the crime of possession of a firearm by a person previously convicted of a felony. *Mead v. State*, Sup. Ct. Op. No. 502 (File No. 804), 445 P.2d 229 (1968), cert. denied, 396 U.S. 855, 90 S. Ct. 117, 24 L. Ed. 2d 104 (1969).

Conviction may be based on circumstantial evidence. — Conviction of "felony in possession" may be based on circumstantial evidence of possession. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

It was error to refuse to give an instruction defining the term "concealed." *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Sentence for possession by convict upheld. — See *Deveroux v. State*, Sup. Ct. Op. No. 1259 (File No. 2636), 548 P.2d 1296 (1976); *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980).

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Fry v. State*, Ct. App. Op. No. 197 (File No. 6810), 655 P.2d 789 (1983).

Cited in *Kampe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Bell v. State*, Ct. App. Op. No. 216 (File No. 6707), 657 P.2d 787 (1983).

Collateral references. — 79 Am. Jur. 2d, Weapons and Firearms, §§ 7-34.
94 C.J.S., Weapons, §§ 3-23.

Sec. 11.61.210. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person

- (1) possesses on the person a firearm while under the influence of an intoxicating liquor or drug;
- (2) discharges a firearm from, on, or across a highway; or
- (3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person.

(b) For purposes of (a)(1) of this section, a person is under the influence of an intoxicating liquor or drug when, as a result of the introduction of an intoxicating liquor or drug into the person's body, physical or mental abilities are impaired so that the person no longer has the ability to possess a firearm with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances.

(c) Misconduct involving weapons in the second degree is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am §§ 21, 22 ch 102 SLA 1980)

Revisor's notes. — Subsection (b) of this section was adopted in ch. 102, SLA 1980, as subsection (c). However, the subsections have been rearranged to conform with the format of AS 11 as revised in 1978.

Effect of amendments. — The 1980 amendment rewrote paragraph (1) of sub-

section (a), and added present subsection (b).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

Separate punishment where defendant fired at cabin and truck. — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where evidence established that defendant fired a rifle at a cabin and a pickup truck did not violate the double jeopardy provisions of this section since there were different and significant differences between the intent in the two crimes. *State v. Smith*, Ct. App. Op. No. 103 (1980), P.2d 419-20.

prohibiting careless use of firearms, see *Giles v. United States*, 10 Alaska 455, 144 F.2d 800 (9th Cir. 1944); *Burke v. United States*, 242 F.2d 761 (9th Cir. 1956).

For case construing former statute prohibiting furnishing, pointing or discharging firearm in a public place, see *Wooch v. State*, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975).

Quoted in *Zinn v. State*, Ct. App. Op. No. 189 (File No. 6210), 656 P.2d 1200 (1983).

Cited in *Dyer v. State*, Ct. App. Op. No. 268 (File No. 6133), P.2d 1196 (1984).

Collateral references. — Use of the word "without intent to inflict injury," § 11.61.210; 23 ALR 1554.

Death from discharge of firearms, 55 ALR 924.

Sec. 11.61.220. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

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(1) lawfully possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on the person;

(2) lawfully possesses a loaded firearm on the person in any place where possessing liquor is sold for consumption on the premises;

(3) being an emancipated minor under 16 years of age, possessing a firearm without the consent of a parent or guardian of the minor.

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

(1) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

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

* (c) The provisions of (a)(1) and (2) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) In a prosecution under (a)(2) of this section, it is a defense that the defendant, at the time of possession, was

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

(2) on business premises in the course of the defendant's employment for the owner or lessee of those premises.

(e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it.

(f) For purposes of (a)(2) of this section, a firearm is loaded if the firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge.

(g) Misconduct involving weapons in the third degree is a class B misdemeanor. (§ 7 ch 166 SLA 1978; am § 23 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land owned or leased by him" for "property" preceding "appurtenant to" near the middle of paragraph (1) of subsection (b).

Legislative history reports. — For revision of 1978 legislative committee report on AS 11 61 220, see 1979 House Journal, pp. 632 -- 633. For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

Opinions of attorney general. — Because AS 11 55 020 now this section excepts only "peace officers" from the general prohibition against carrying concealed weapons, other persons, including state employees charged with limited law

enforcement duties unless a peace officer within the meaning of AS 01 10 060(6), may not carry concealed weapons. December 22, 1977, Op. Att'y Gen.

A comparison of the language of AS 18 05 01(6), which describes the general powers and duties of a specially commissioned officer, with that of AS 18 05 01(8), which describes the powers and duties of commissioned officers of the Department of Public Safety with particular reference to "member" of the state troopers, supports the conclusion that a specially commissioned officer is a "peace officer" for purposes of both AS 01 10 060(6) and AS 11 55 020 (now this section) when performing law enforcement duties within the limitations set forth on the face of a special commission and fur-

Furthermore, may carry concealed weapons without violating AS 11.55.010 (now this section) while performing these duties to

the extent permitted by the commission itself. December 22, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Ordinance prohibiting concealment of weapons in automobiles not prohibited. — This section does not imply a legislative intent to create a privilege to conceal a weapon in an automobile, nor does it implicitly require state-wide uniformity of weapons regulations; thus, municipal ordinance interpreted as forbidding concealing of weapons in auto-

mobiles was not prohibited by this section. City of Anchorage v. Richards, Ct. App. Op. No. 173 (File Nos. 6387, 6459, 6504, 6540), 654 P.2d 797 (1982).

Sentence for carrying a concealed weapon upheld. — See Ozena v. State, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980) (decided under former AS 11.55.010).

Collateral references. — Offense of carrying weapon on person as affected by case where defendant was at the time, 73 ALR 599.

Scope and effect of exception, in statute forbidding carrying of weapons, as to person on his own premises or at his place of business, 57 ALR2d 938.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment, 43 ALR2d 492.

Sec. 11.61.230. Possession of burglary tools. (a) A person commits the crime of possession of burglary tools if the person possesses a burglary tool with intent to use or permit use of the tool in the commission of

- (1) burglary in any degree;
- (2) a crime referred to in AS 11.46.130(a)(3); or
- (3) theft of services.

(b) As used in this section, "burglary tools" means

- (1) nitroglycerine, dynamite, or any other tool, instrument, or device adapted or designed for use in committing a crime referred to in (a)(1)-(3) of this section; or
- (2) any acetylene torch, electric arc, burning bar, thermal lance, oxygen lance, or other similar device capable of burning through steel, concrete, or other solid material.

(c) Possession of burglary tools in a class A misdemeanor. (§ 7 ch 106 SLA 1978)

Collateral references. — 13 Am. Jur. 2d Burglary, § 74-77; 13 C.J.S., Burglary, § 43-45.

Validity, construction and application of statutes relating to burglary tools, 33 ALR2d 708.

Sec. 11.61.240. Criminal possession of explosives. (a) A person commits the crime of criminal possession of explosives if the person possesses or manufactures an explosive substance or device and intends to use that substance or device to commit a crime.

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Procedure

Title 15
Deceit, Embezzlement,
Guardianship and Trusts

(STATE CARRYING FIREARM PERMIT STATUTE)

STATE OF (MONTANA) *0112/84*

MAR 27 1984

101.01 (a)

Upon the filing of an application pursuant to Section 101.01 (b), a permit to carry a concealed weapon shall be issued by the chief law enforcement officer of the applicant's place of residence unless the applicant:

1. has had a judgement of conviction entered, by a court of Montana, another state or of the United States, against him for: murder, non-negligent manslaughter, forcible rape or sodomy, mayhem, kidnapping, robbery, burglary, aggravated assault, arson, or attempt to conspiracy to commit such a crime; and the applicant has not been pardoned for such conviction or had his civil rights restored or such conviction has not been expunged or set aside;
2. is a fugitive from justice;
3. has been adjudicated, by a court of Montana, another state or the United States, an alcoholic, unless such adjudication has been withdrawn or reversed;
4. is an unlawful user of narcotics;
5. has been adjudicated, by a court of Montana, another state or the United States, a mental defective, unless such adjudication has been withdrawn or reversed;
6. is committed to any mental institution;
7. has renounced his United States citizenship and his United States citizenship has not been restored;
8. is an alien illegally in the United States;
9. is under 21 years of age;
10. has, within the past three years, been convicted of a violation of Section 101.04 or 101.05; or

11. is otherwise prohibited by law from transporting, receiving, or possessing such a weapon.

101.01 (b)

An application shall be made in writing on a form provided by the chief law enforcement officer. Such form shall include only the applicant's name, address, height, weight, race, color of hair, color of eyes, date of birth, and a certification, signed by the applicant, that he is not disabled from receiving a permit pursuant to Section 101.01(a).

101.01 (c)

Permits shall be issued or denied in writing within 45 days of the date the application is received by the chief law enforcement officer. If the chief law enforcement officer fails to issue or deny the permit within 45 days, the applicant may file a petition for a writ of mandamus in the (trial court) of the (county or city) in which he resides to compel the chief law enforcement officer to issue the permit. If the court mandates the chief law enforcement officer to issue the permit, it shall award attorney's fees and costs to the applicant. If the permit is denied, the chief law enforcement officer shall state, in writing, the specific reason(s) for the denial.

101.02

In the event of a denial or revocation, the applicant may, within 60 days of the date of denial or revocation is received by the applicant, file a petition for judicial review in the (trial court) which shall make a de novo determination whether the applicant is disabled, pursuant to section 101.01(a), from being issued a permit, and may consider evidence presented by either party whether to not considered by the chief law enforcement officer. If the court mandates the chief law enforcement officer to issue the permit, it shall award attorney's fees and costs to the applicant.

101.03 A permit shall be valid throughout the state and shall be valid until revoked pursuant to Section 101.04.

101.04 If, subsequent to the issuance of the permit, a permit holder should become disabled from being issued a permit pursuant to the provisions of Section 101.01(a), the chief law enforcement officer shall, after notifying the permit holder in writing of such disability, revoke the permit. The permit holder may seek judicial review of such a revocation pursuant to the provisions of Section 101.02.

101.05 Carrying a faked, altered, or revoked permit, or a permit belonging to another, shall be punishable as a misdemeanor.

106.06 Knowingly and willfully providing false information on an application filed pursuant to Section 101.01(b) shall be punishable as a misdemeanor. Upon conviction, if a decision on the application is pending, the application shall be denied; if the permit has been issued, it shall immediately be revoked.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 Rhode Island Avenue, N.W.
WASHINGTON, D.C. 20036

Office of the
General Counsel

M E M O R A N D U M

TO: Louis Brune
FROM: Bob Dowlut *BD*
DATE: March 12, 1984
RE: Alaska House Bill 557

The bill would allow a court to "order the forfeiture to the state of any deadly weapon possessed or used by the defendant during the commission of the offense."

The use of the term "or" means that a weapon may be forfeited under two separate sets of circumstances:

1. The deadly weapon was used by the defendant during the commission of the offense.
2. The deadly weapon was possessed by the defendant during the commission of the offense.

The conduct sought to be proscribed in the first set of circumstances is typically proscribed in forfeiture statutes. It focuses on the misuse of a firearm.

The conduct targeted in the second set of circumstances need not involve the misuse of a firearm. For example, a firearm could be forfeited if it was possessed by the defendant during the commission of a traffic offense. To remedy this potential problem, I recommend the following language:

(9) order the forfeiture to the state of any
deadly weapon (A) used by the defendant during

the commission of the offense or (B) any deadly
possessed by the defendant during the commission
of arson, burglary, robbery, manslaughter, mur-
der, kidnapping, rape, attempted rape, assault
with intent to commit a felony, riot, jail break,
or unlawful delivery or sale of a controlled
substance; as used in this paragraph, "deadly
weapon" means a deadly weapon as defined in
AS 11. 81. 900.

law existing at the time of the commission of the offense in the same manner as if this Act had not become law."

Sec. 12.55.005. Declaration of purpose. The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

- (1) the seriousness of the defendant's present offense in relation to other offenses;
- (2) the prior criminal history of the defendant and the likelihood of his rehabilitation;
- (3) the need to confine the defendant to prevent further harm to the public;
- (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;
- (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; and
- (6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms. (§ 12 ch 166 SLA 1978)

Cross reference. — For discussion of sentencing goals, see note to AS 12.55.120. report on ch. 106, SLA 1978 (HR 661), see 1978 Senate Journal Supplement No. 47 (June 12, 1978).
Legislative history report. — For

Sec. 12.55.010. Imprisonment on judgment for payment of fine.

Repealed by § 21 ch 166 SLA 1978.

Cross references. — As to fines, see AS 12.55.035. As to enforcement of fines, see AS 12.55.051. Editor's note. — The repealed section derived from § 8.01, ch. 34, SLA 1962.

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

- (1) impose a fine when authorized by law and as provided in AS 12.55.035;
- (2) order the defendant to be placed on probation under conditions specified by the court which may include provision for active supervision;

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Sec. 12.55.
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- (3) impose a definite term of periodic imprisonment;
- (4) impose a definite term of continuous imprisonment;
- (5) order the defendant to make restitution as provided in AS 12.55.045;
- (6) order the defendant to carry out a continuous or periodic program of community work as provided in AS 12.55.055;
- (7) suspend execution of all or a portion of the sentence imposed as provided in AS 12.55.080;
- (8) suspend imposition of sentence as provided in AS 12.55.085.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

- (1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;
- (2) imprisonment is necessary to protect the public from further harm by the defendant; or
- (3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) ~~In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or, impose any other civil penalty.~~ (§ 12 ch 166 SLA 1978; am § 37, ch 102 SLA 1980)

< already in state law!

Effect of amendment. — The 1950 amendment rewrote paragraph (3) of subsection (b).

Editor's note. — The cases cited in the note below were decided under former AS 11.05.140.

Legislative history report. — For report on ch. 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, (May 29, 1980) or 1980 House Journal Supplement, No. 79, (May 29, 1980).

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment

on that matter, more than 60 days after it has imposed sentence. *Davenport v. State*, Sup. Ct. Op. No. 1218 (File No. 2202), 543 P.2d 1204 (1975); *Szeratics v. State*, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977).

Test to be used in determining whether multiple offenses can be punished separately. — See *State v. Occhipinti*, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. *State v. Occhipinti*, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

Sec. 12.55.020. Enforcing judgment to pay money.

Repealed by § 21 ch 166 SLA 1978.

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which he knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression which the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance which the defendant does not intend to perform or knows will not be performed;

(15) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(16) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(17) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(18) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

(19) "felon for a term o

(20) "fiduciary receiver, or of another p

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Official Business

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

SR-A-Box 1324B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811

February 23, 1984

Lou Brune
NRA-ILA
1600 Rhode Island Avenue, NW
Washington, D.C. 20036

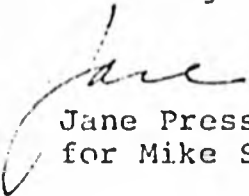
Dear Lou:

Attached is a copy of HB 557, a bill relating to forfeiture of weapons used to commit a crime. Statutes that would be affected by this bill are also attached.

The House Judiciary Committee has no immediate plans for hearing this bill.

I will be sure to let Mike know that you called.

Best Regards,


Jane Press
for Mike Szymanski

P.S. Perhaps you can help me too? A while back Mike had asked me to get the names and addresses of the NRA representatives in Alaska. Could you please provide us with this information?

Thanks.

Carolyn WARREN, et al., Appellants,

v.

DISTRICT OF COLUMBIA, et
al., Appellees.

Wilfred NICHOL, Appellant,

v.

DISTRICT OF COLUMBIA METROPOL-
ITAN POLICE DEPARTMENT, et
al., Appellees.

Nos. 79-6, 79-394.

District of Columbia Court of Appeals.

Argued En Banc April 13, 1981.

Decided Dec. 21, 1981.

Suits against District of Columbia and individual members of metropolitan police department for negligent failure to provide adequate police services were dismissed by the Superior Court, Joseph M. Hannon and William C. Pryor, JJ., and plaintiffs appealed. The Court of Appeals, Nebeker, J., held that: (1) fact that police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing upon victims therein, or for leaving premises without so ascertaining, and (2) where unknown occupants in vehicle which rear-ended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability.

Affirmed.

Kelly, J., filed opinion concurring in part and dissenting in part in which Mack, J., joined.

Newman, C. J., filed statement concurring in part and dissenting in part.

1. District of Columbia \Leftrightarrow 7

Government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen, but, rather, duty to provide public services is owed to public at large, and, absent special relationship between police and individual, no specific legal duty exists.

2. District of Columbia \Leftrightarrow 7

That police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing upon victims therein, or for leaving premises without so ascertaining.

3. District of Columbia \Leftrightarrow 7

Where unknown occupants in vehicle which rear-ended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability.

Stephen A. Friedman, Washington, D. C., for appellants.

Charles L. Reischel, Deputy Corp. Counsel, with whom Judith W. Rogers, Corp. Counsel, and David P. Sutton, Asst. Corp. Counsel, Washington, D. C., were on the petition, for appellees.

Before NEWMAN, Chief Judge, and KELLY, KERN, NEBEKER, HARRIS, MACK and FERREN, Associate Judges.

POSSESSION AND USE OF FIREARMS

166.180 Negligently wounding another. Any person who, as a result of his failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed \$500, or both. In addition, any person so convicted shall forfeit any license to hunt, obtained under the laws of this state, and shall be ineligible to obtain a license to hunt for a period of 10 years following the date of his conviction. [Formerly 163.310]

Note: 166.180 to 166.340 were enacted into law by the Legislative Assembly but were not added to or made a part of the Oregon Criminal Code of 1971 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

166.190 Pointing firearm at another; courts having jurisdiction over offense. Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in any sum not less than \$10 nor more than \$500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justices of the peace and district courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice of the peace with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury. [Formerly 163.320]

Note: See note under 166.180.

166.210 Definitions for ORS 166.250 to 166.470. As used in ORS 166.250 to 166.270, 166.280, 166.290 and 166.410 to 166.470:

(1) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

(2) "Pistol," "revolver" and "firearms capable of being concealed upon the person," apply to and include all firearms having a barrel less than 12 inches in length.

(3) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which two or more shots may be

fired by a single pressure on the trigger device. [Amended by 1977 c.769 §1; 1979 c.779 §3]

Note: See note under 166.180.

166.220 Attempting to use dangerous weapon; carrying dangerous weapon with intent to use it. (1) Any person who attempts to use, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any loaded pistol, revolver or other firearm, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, billy, sandclub, sandbag, metal knuckles, nunchaku sticks, bomb or bombshell, or any other dangerous or deadly weapon or instrument, commits a Class C felony.

(2) The carrying or possession of any of the weapons specified in subsection (1) of this section by any person while committing, or attempting or threatening to commit a felony or a breach of the peace or any act of violence against the person or property of another is presumptive evidence of carrying such weapon with intent to use the same in violation of subsection (1) of this section.

(3) For the purpose of subsection (1) of this section, any knife with a blade longer than three and one-half inches when carried concealed upon the person, is a dangerous weapon. [Amended by 1975 c.700 §1]

Note: See note under 166.180.

166.230 [Repealed by 1979 c.779 §7]

166.240 Carrying of concealed weapons. (1) Except as provided in ORS 166.260; 166.290 and subsection (2) of this section, any person who carries concealed about his person in any manner, any revolver, pistol, or other firearm, any knife, other than an ordinary pocketknife, or any dirk, dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person, shall be punished upon conviction by a fine of not less than \$10 nor more than \$200, or by imprisonment in the county jail not less than five days nor more than 100 days, or both.

(2) Nothing in subsection (1) of this section applies to any sheriff, constable, police or other peace officer, whose duty it is to serve process or make arrests. Justices of the peace have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section. [Amended by 1977 c.454 §1]

Note: See note under 166.180.

166.250 Unlawful possession of weapons. (1) Except as otherwise provided in this section, ORS 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, any person who possesses or has in his possession any machine gun, or carries concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person, without having a license to carry such firearm as provided in ORS 166.290, is guilty of a misdemeanor, unless he has been convicted previously of any felony or of any crime made punishable by this section, ORS 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, in which case he is guilty of a felony.

(2) This section does not prohibit any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business is required of any such citizen.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section. [Amended by 1979 c.779 §4]

Note: See note under 166.180.

166.260 Persons not affected by ORS 166.250. ORS 166.250 does not apply to or affect:

(1) Sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers.

(2) Any person summoned by any such officer to assist in making arrests or preserving the peace, while said person so summoned is actually engaged in assisting the officer.

(3) The possession or transportation by any merchant of unloaded firearms as merchandise.

(4) Members of the Army, Navy or Marine Corps of the United States, or of the National Guard, when on duty.

(5) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(6) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.

(7) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(8) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

(9) A corrections officer while transporting or accompanying an individual convicted of or arrested for an offense and confined in a place of incarceration or detention while outside the confines of the place of incarceration or detention. [Amended by 1977 c.207 §1]

Note: See note under 166.180.

166.270 Certain exconvicts forbidden to possess arms. (1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns, or has in his possession or under his custody or control any pistol, revolver, or other firearms capable of being concealed upon the person, or machine gun, commits the crime of exconvict in possession of a firearm.

(2) For the purposes of this section, a person "has been convicted of a felony" if, at the time of his conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Provided, however, that such conviction shall not be deemed a conviction of a felony if:

(a) At the time of conviction, and pursuant to the law of the jurisdiction in which the offense occurred, the offense was made a misdemeanor by the type or manner of sentence actually imposed; or

(b) The offense was for possession of marijuana.

(3) Subsection (1) of this section shall not apply to any person who has been convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve the possession or use of a firearm, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section.

(4) Exconvict in possession of a firearm is a Class C felony. [Amended by 1975 c.702 §1]

Note: See note under 166.180.

166.275 Possession of weapons by inmates of penal institutions. Any person committed to any penal institution who, while under the jurisdiction of any penal institution or while being conveyed to or from any penal institution, possesses or carries upon his person, or has under his custody or control any dangerous instrument, or any weapon including but not limited to any blackjack, slingshot, billy, sand club, metal knuckles, explosive substance, dirk, dagger, sharp instrument, pistol, revolver or other firearm without lawful authority, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not more than 20 years. [1953 c.533 §1]

Note: See note under 166.180.

166.280 Seizure of concealed weapons; destruction; exception; sale by auction. (1) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any machine gun, pistol, revolver or other firearm capable of being concealed upon the person, or any firearm used during the commission of any felony or misdemeanor is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are nuisances, and shall be surrendered to the magistrate before whom the person is taken, except that in any city, county, town or other municipal corporation the weapons shall be surrendered to the head of the police force or police department.

(2) The officers to whom the weapons are surrendered, except as provided under subsection (4) of this section or upon the certificate of a judge of a court of record or of the district attorney of the county that their preservation is necessary or proper to the ends of justice, shall have authority and be responsible, subject to applicable laws, for selling such weapons or shall destroy the weapons to such extent that they are wholly and entirely ineffective and useless for the purpose for which they were manufactured.

(3) Upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby, such weapon shall be preserved until the necessity for its use ceases, at which time, except as provided under subsection (4) of this section, the court shall order that the weapons be delivered to the officials having responsibility under applicable laws and subsection (2) of this section for selling such weapons, or destroying the weapons to such extent that they are wholly and entirely ineffective and

useless for the purpose for which they were manufactured.

(4) In the event any such weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, it shall not be destroyed but shall be restored to its lawful owner as soon as its use as evidence has been served, upon identification of the weapon and proof of ownership.

(5) The sale of any weapons under this section shall be by public auction. The agency holding the weapons shall conduct the auction annually. The agency shall publish notice of the time and place of the auction in the principal local newspaper no less than 20 nor more than 30 days before the date of the auction. Written or printed notice of the auction shall also be posted in three public places of the county where the sale is to take place, not less than 10 days successively. The agency shall permit public inspection of the weapons to be auctioned. Items shall be sold individually unless there is no interested bidder, in which case they may be sold in lots. [Amended by 1981 c.767 §1]

Note: See note under 166.180.

166.290 Issuance of license to carry weapon concealed; fees; liability. (1) The sheriff of a county, upon proof before him, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, may issue to such person a license to carry concealed a pistol, revolver or other firearm for a period of one year from the date of the license, upon payment of the fee established under subsection (3) of this section. The fees shall be turned over to the treasurer of such county and credited to the general fund thereof.

(2) All applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant; his date of birth, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. The sheriff shall require that the applicant submit to fingerprinting at the time of applying for issuance or renewal of a license under this section. Any license issued upon the application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. The record of each license issued or renewed under this section shall be kept in the office of the county clerk. The applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

(3) Fees for the issuance and renewal of licenses under this section shall be set by the governing body of each county at an amount estimated to provide for the administration of this section, but the fees shall not exceed:

- (a) \$10 for the issuance of a license.
- (b) \$2.50 for the renewal of a license.

(4) Neither a sheriff nor any authorized representative of a sheriff who is engaged in the receipt and review of any application for or in the issuing or denial of any license under this section shall incur any civil or criminal liability as the result of the lawful performance of his duties under this section. [Amended by 1973 c.391 §1]

Note: See note under 166.180.

166.300 Killing another as cause for loss of right to bear arms. (1) Any person who has committed, with firearms of any kind or description, murder in any degree, or manslaughter, either voluntary or involuntary, or who in a careless or reckless manner, kills or injures another with firearms, and who, at any time after committing murder or manslaughter or after said careless or reckless killing or injury of another, carries or bears firearms of any kind or description within this state, shall be punished upon conviction by a fine of not more than \$500, or by imprisonment in the county jail not to exceed one year, or both.

(2) Subsection (1) of this section does not deprive the people of this state of the right to bear arms for the defense of themselves and the state, and does not apply to any peace officer in the discharge of his official duties or to a member of any regularly constituted military organization while on duty with such military organization.

(3) Justices of the peace, district courts, county courts and all other courts having jurisdiction as justices of the peace, shall have concurrent jurisdiction with the circuit courts of all prosecutions under subsection (1) of this section.

Note: See note under 166.180.

166.310 Concealed weapon found on arrested person; information to be filed. Whenever any person is arrested and it is discovered that he possesses or carries or has possessed or carried upon his person any loaded pistol, revolver or other firearm, or any weapon named or enumerated in ORS 166.220, in violation of ORS 166.220, 166.510 or 166.520, the person making the arrest shall forthwith lay an information for a violation of the section against the person arrested, before the nearest or most ac-

cessible magistrate having jurisdiction of the offense, and the magistrate must entertain and examine the information and act thereon in the manner prescribed by law.

Note: See note under 166.180.

166.320 Setting springgun or setgun.

(1) Any person who places or sets any loaded springgun, setgun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connected with it, or with its trigger, shall be punished upon conviction by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(2) Subsection (1) of this section does not apply to any loaded springgun, setgun, firearm or other device placed for the purpose of destroying gophers, moles or other burrowing rodents, and does not prevent the use of a coyote getter by employes of county, state or federal governments engaged in cooperative predatory animal control work.

Note: See note under 166.180.

166.330 Use of firearms with other than incombustible gun wadding. Any person who uses in any firearms discharged on lands within this state, not his own, anything other than incombustible gun wadding, shall be punished upon conviction by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for not less than two days nor more than 60 days.

Note: See note under 166.180.

166.340 [1965 c.20 §§2, 3; 1969 c.351 §1; repealed by 1981 c.41 §3]

**POSSESSION OF
DESTRUCTIVE DEVICE OR
FIREARM IN PUBLIC
BUILDING**

166.360 Definitions for ORS 166.360 to 166.380. As used in ORS 166.360 to 166.380, unless the context requires otherwise:

(1) "Capitol building" means the Capitol, the Supreme Court Building, the State Office Building, the State Library Building, the Labor and Industries Building, the State Highway Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds

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76-10-301

CRIMINAL CODE

PART 3

EXPLOSIVES

76-10-301. Unlawful handling of explosives in city or town.

Cross-References.

Bus Passenger Safety Act, bombing buses or terminals, carrying explosives into terminal or aboard bus, 76-10-1505, 76-10-1507.

PART 5

WEAPONS

Section

76-10-504. Carrying concealed dangerous weapon.

76-10-513. License to carry concealed weapon — Requirements for issuance.

76-10-514. License — Application form.

76-10-515. License — Fingerprints transmitted to bureau of criminal investigation — Report from bureau.

76-10-501. Definitions.

Cross-References.

Bus Passenger Safety Act, offenses related to dangerous weapons or firearms, 76-10-1504, 76-10-1505, 76-10-1507.

76-10-503. Possession of dangerous weapon — Persons, etc.

Constitutionality.

Conviction of an alien under this section for possession of a firearm was not unconstitutional. State v. Vlaci (1982) 645 P 2d 677 (two justices concurring, one justice concurring with separate opinion, and two justices concurring in the result).

Aliens.

State regulation of the possession of firearms by aliens has not been preempted by federal law. State v. Vlaci (1982) 645 P 2d 677 (two justices concurring, one justice con-

curring with separate opinion, and two justices concurring in the result).

Parolees.

Testimony by a Colorado parole officer that defendant was under his supervision did not permit inference that the parole was from a felony conviction since parole officer had no personal knowledge of the conviction; copies of Colorado court records certified by a notary public who had no custody of the documents were not properly authenticated and could not be received in evidence as proof that defendant had been convicted of a felony. State v. Lamorie (1980) 610 P 2d 342.

76-10-504. Carrying concealed dangerous weapon. (1) Any person, except those persons described in section 76-10-503 and those persons exempted under section 76-10-510, carrying a concealed dangerous weapon, as defined in this part 5, is guilty of a class B misdemeanor, except that a firearm that contains no ammunition and is enclosed in a case, gun box, or securely-tied package shall not be considered a concealed weapon, but:

(a) If the dangerous weapon is a firearm and contains no ammunition, he shall be guilty of a class B misdemeanor;

(b) If the dangerous weapon is a firearm and contains ammunition, he shall be guilty of a class A misdemeanor; or

(c) If the dangerous weapon is a sawed-off shotgun, or if the dangerous weapon is a firearm and is used to commit a crime of violence, he shall be guilty of a felony of the third degree.

(2) Nothing in this part 5 shall prevent any person, except persons described in section 76-10-503, from keeping within his place of residence, place of business, or any vehicle under his control any firearm, except that it shall be a class B misdemeanor to carry a loaded firearm in a vehicle.

History: C. 1953, 76-10-504, enacted by L. 1982, ch. 17, § 1.

enacted by chapter 196, Laws of Utah 1973. — Laws 1982, ch. 17.

Compiler's Notes.

Laws 1982, ch. 17, § 1 repealed old section 76-10-504 (C. 1953, 76-10-504, enacted by L. 1973, ch. 196, § 76-10-504), relating to carrying concealed dangerous weapons, and enacted new section 76-10-504.

Effective Date.

Section 2 of Laws 1982, ch. 17 provided that the act should take effect upon approval. Approved February 19, 1982.

"Carrying."

A person will be deemed to be "carrying" a concealed weapon where such weapon is shown to be under the person's control and within his immediate, easy or ready access; it is not required that the weapon be upon one's person to constitute "carrying" within the meaning of this section. *State v. Williams* (1981) 636 P 2d 1092.

Lesser included offenses.

The offense of carrying a loaded firearm in a vehicle, 76-10-505, is not a necessarily included offense of carrying a concealed dangerous weapon. *State v. Williams* (1981) 636 P 2d 1092.

Title of Act.

An act relating to concealed weapons; providing for a cross reference to relevant statutes; allowing an exemption from the statute when a firearm contains no ammunition and is enclosed in a case, gun box or securely-tied package; exempting from the statute firearms kept in a home, place of business, or vehicle; prohibiting a loaded firearm from being kept in a vehicle; and providing an effective date.

This act repeals and reenacts section 76-10-504, Utah Code Annotated 1953, as

76-10-505. Carrying loaded firearm in vehicle or on street.

Cross-References.

Registered private security officer exempt during performance of duties, 58-45-20.

Lesser included offense.

The offense of carrying a loaded firearm in a vehicle is not a necessarily included offense of carrying a concealed dangerous weapon, 76-10-504. *State v. Williams* (1981) 636 P 2d 1092.

76-10-506. Threatening with or using dangerous weapon, etc.

Aggravated assault.

Aggravated assault, 76-5-103, committed by use of a deadly weapon is not the same crime proscribed by this section, and a per-

son convicted of aggravated assault is not entitled to receive the misdemeanor penalty provided by this section, but is to be sentenced under 76-5-103. *State v. Verdin* (1979) 595 P 2d 862.

76-10-513. License to carry concealed weapon — Requirements for issuance.

(1) The sheriff of a county, commissioner of public safety, chief of police, city marshal, town marshal, or other head of the police department of any city or county, upon proof that the person applying is of good character, and upon a showing that good cause exists for the issuance, may issue to such person a license to carry a concealed weapon within their jurisdiction for any period of time not to exceed one year from the issuance date of the license.

(2) A license may include reasonable restrictions which the issuing authority deems warranted including, but not limited to, time, place, or circumstances under which the applicant may carry the weapon.

History: C. 1953, 76-10-513, enacted by L. 1973, ch. 196, § 76-10-513; L. 1979, ch. 76, § 1.

Compiler's Notes.

The 1979 amendment designated the former section as subsec. (1); substituted

9.40.120 Incendiary devices—Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than twenty-five years. [1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.40.130 Incendiary devices—Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firemen, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section. [1971 ex.s. c 302 § 5; 1969 ex.s. c 79 § 4.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.41

FIREARMS AND DANGEROUS WEAPONS

Sections

9.41.010	Terms defined.
9.41.025	Committing crime when armed—Penalties—"Inherently dangerous" defined—Resisting arrest.
9.41.030	Being armed prima facie evidence of intent.
9.41.040	Unlawful possession of a short firearm or pistol—Certain persons not precluded from ownership of firearms.
9.41.050	Carrying pistol.
9.41.060	Exception to restriction on carrying pistol.
9.41.070	Issue of licenses to carry—Fee—Revocation—Renewal.
9.41.080	Delivery to minors and others forbidden.
9.41.090	Commercial sales regulated—Requirements for delivery—Hold on delivery.
9.41.093	Exemptions.
9.41.095	Denial of application—Appeal.
9.41.097	Supplying information on persons purchasing pistols or applying for concealed pistol licenses.
9.41.098	Forfeiture of firearms, order by courts—Return to owner—Confiscation by law enforcement officer.
9.41.100	Dealers to be licensed.
9.41.110	Dealer's licenses, by whom granted and conditions thereof—Wholesale sales excepted—Permits prohibited.
9.41.120	Certain transfers forbidden.
9.41.130	False information forbidden.
9.41.140	Alteration of identifying marks—Exceptions.
9.41.150	Exemptions.
9.41.160	General penalties.
9.41.170	Alien's license to carry firearms—Exception.
9.41.180	Setting spring gun.
9.41.185	Coyote getters.
9.41.190	Machine guns prohibited—Exception.
9.41.200	Machine gun defined.
9.41.210	Penalty.
9.41.220	Machine guns and parts contraband.
9.41.230	Aiming or discharging firearms.
9.41.240	Use of firearms by minor.
9.41.250	Dangerous weapons—Evidence.

9.41.260	Dangerous exhibitions.
9.41.270	Weapons apparently capable of producing bodily harm, carrying, exhibiting, displaying, or drawing unlawful—Penalty—Exceptions.
9.41.280	Students carrying dangerous weapons on school premises—Penalty—Exceptions.
9.41.290	Consistency of local laws.

Carrying loaded shotgun or rifle in vehicle: RCW 77.16.250.

Explosives: Chapter 70.74 RCW.

Rifles and shotguns, purchasing out-of-state and by nonresidents: Chapter 19.70 RCW.

Shooting firearm from, across, or along public highway: RCW 77.16.260.

9.41.010 Terms defined. (1) "Short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

(2) "Crime of violence" as used in this chapter means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, burglary in the second degree, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a crime of violence in subsection (2) (a) of this section; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under subsection (2) (a) or (b) of this section.

(3) "Firearm" as used in this chapter means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(4) "Commercial seller" as used in this chapter means a person who has a federal firearms license. [1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Severability—1983 c 232: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 232 § 14.]

Severability—1971 ex.s. c 302: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 302 § 35.]

Severability—1961 c 124: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1961 c 124 § 13.]

Preemption and general repealer—1961 c 124: "All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed." [1961 c 124 § 14.]

Short title—1935 c 172: "This act may be cited as the 'Uniform Firearms Act.'" [1935 c 172 § 18.]

Severability—1935 c 172: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1935 c 172 § 17.]

Construction—1935 c 172: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [1935 c 172 § 19.]

9.41.025 Committing crime when armed—Penalties—“Inherently dangerous” defined—Resisting arrest. (Effective until July 1, 1984.) Any person who shall commit or attempt to commit any felony, including but not limited to assault in the first degree, rape in the first degree, burglary in the first degree, robbery in the first degree, riot, or any other felony which includes as an element of the crime the fact that the accused was armed with a firearm, or any misdemeanor or gross misdemeanor categorized herein as inherently dangerous, while armed with, or in the possession of any firearm, shall upon conviction, in addition to the penalty provided by statute for the crime committed without use or possession of a firearm, be imprisoned as herein provided:

(1) For the first offense the court shall impose a sentence of not less than five years, which sentence shall not be suspended or deferred;

(2) For a second offense, or if, in the case of a first conviction of violation of any provision of this section, the offender shall previously have been convicted of violation of the laws of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than seven and one-half years, which sentence shall not be suspended or deferred;

(3) For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the law of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than fifteen years, which sentence shall not be suspended or deferred;

(4) Misdemeanors or gross misdemeanors categorized as “inherently dangerous” as the term is used in this statute means any of the following crimes or an attempt to commit any of the same: Simple assault, coercion, vehicle prowling, escape in the third degree, obstructing a public servant, theft in the third degree, resisting arrest, and communication with a minor for immoral purposes.

(5) If any person shall resist apprehension or arrest by firing upon a law enforcement officer, such person shall in addition to the penalty provided by statute for resisting arrest, be guilty of a felony and punished by imprisonment for not less than ten years, which sentence shall not be suspended or deferred. [1982 1st ex.s. c 47 § 1; 1981 c 258 § 1; 1969 ex.s. c 175 § 1.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.030 Being armed prima facie evidence of intent. In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a pistol and had no license to carry the same shall be prima facie evidence of his intention to commit said crime of violence. [1935 c 172 § 3; RRS § 2516-3.]

9.41.040 Unlawful possession of a short firearm or pistol—Certain persons not precluded from ownership

of firearms. (1) A person is guilty of the crime of unlawful possession of a short firearm or pistol, if, having previously been convicted in this state or elsewhere of a crime of violence or of a felony in which a firearm was used or displayed, the person owns or has in his possession any short firearm or pistol.

(2) Unlawful possession of a short firearm or pistol shall be punished as a class C felony under chapter 9A-.20 RCW.

(3) As used in this section, a person has been “convicted” at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, post-trial motions, and appeals. A person shall not be precluded from possession if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(4) Except as provided in subsection (5) of this section, a person is guilty of the crime of unlawful possession of a short firearm or pistol if, after having been convicted of any felony violation of the uniform controlled substances act, chapter 69.50 RCW, or equivalent statutes of another jurisdiction, or after any period of confinement under RCW 71.05.320 or an equivalent statute of another jurisdiction, or following a record of commitment pursuant to chapter 10.77 RCW or equivalent statutes of another jurisdiction, he owns or has in his possession or under his control any short firearm or pistol.

(5) Notwithstanding subsection (1) of this section, a person convicted of an offense other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401(a) and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from ownership, possession, or control of a firearm as a result of the conviction. [1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.050 Carrying pistol. (1) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed weapon.

(2) A person who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(3) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed weapon and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle. [1982 1st

ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.060 Exception to restriction on carrying pistol. The provisions of RCW 9.41.050 shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the army, navy or marine corps of the United States or of the national guard or organized reserves when on duty, or to regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, or to regularly enrolled members of clubs organized for the purpose of target shooting or modern and antique firearm collecting or to individual hunters: *Provided*, Such members are at, or are going to or from their places of target practice, or their collector's gun shows and exhibits, or are on a hunting, camping or fishing trip, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving from one place of abode or business to another. [1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

9.41.070 Issue of licenses to carry—Fee—Revocation—Renewal. (1) The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. Such citizen's constitutional right to bear arms shall not be denied to him, unless he:

- (a) Is ineligible to own a pistol under the provisions of RCW 9.41.040; or
- (b) Is under twenty-one years of age; or
- (c) Is subject to a court order or injunction regarding firearms pursuant to RCW 10.99.040, 10.99.045, or 26.09.060; or
- (d) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime of violence; or
- (e) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

The license shall be revoked immediately upon conviction of a crime which makes such a person ineligible to own a pistol or upon the third conviction for a violation of this chapter within five calendar years. The license shall be in triplicate, in form to be prescribed by the department of licensing, and shall bear the name, address, and description, fingerprints and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing said license.

(2) The fee for the original issuance of a four-year license shall be twenty dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the issuance of the license: *Provided further*, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed; and

(c) Twelve dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(3) The fee for the renewal of such license shall be twelve dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the renewal of the license: *Provided further*, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund; and

(b) Eight dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(4) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (3) of this section.

(5) Notwithstanding the requirements of subsections (1) through (4) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(6) A political subdivision of the state shall not modify the requirements of this section. A civil suit may be brought to enjoin a wrongful refusal to issue a license. The prevailing party is entitled to reasonable costs, including attorneys' fees. [1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Severability—1983 c 232: See note following RCW 9.41.010.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 28, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Heidi Borson ^{HAB}
Legislative Analyst

RE: Concealed Weapons
Research Request 83-217

Mary Witman of your staff requested that we provide information on concealed weapons laws and handgun training programs in Alaska and other states. Specifically, she asked us to research the following topics:

- Can Alaska residents obtain permits to carry concealed weapons?
- Which states allow citizens to carry concealed weapons? What are the consequences, i.e., how is the crime rate affected?
- What handgun training programs exist in other states, especially for women? How have these programs affected the crime rate?

In collecting data to respond to this request, I contacted law enforcement and public safety officials in several states, and the National Rifle Association headquarters in Washington, D.C.; I also used information on concealed weapons compiled by our agency for a previously released research request.

CONCEALED WEAPONS LAWS IN ALASKA AND OTHER STATES

Alaska law provides that citizens may purchase and possess firearms; however, under AS 11.61.220, carrying a concealed weapon constitutes a class B misdemeanor. Furthermore, no statutory provision exists for obtaining a permit to carry a concealed weapon under any circumstances.

Fifteen other states and the District of Columbia also prohibit carrying concealed weapons. Those states are listed below:

Arizona	Kentucky	Ohio
Arkansas	Missouri	Oklahoma
Hawaii	Nebraska	Tennessee
Illinois	New Mexico	Texas
Kansas	North Carolina	Wisconsin

The remaining 33 states permit citizens to carry concealed weapons in some circumstances. Each of those states, except Vermont, requires citizens to obtain permits to carry concealed weapons; however, permit policies vary greatly. Some states, like Washington, issue permits upon demand, while other states, like Delaware and West Virginia, have such stringent permit policies that permits are seldom issued. A list of states which allow citizens to carry concealed weapons and a description of their concealed weapons laws follow:

- Alabama allows its county sheriffs to issue permits for carrying concealed weapons. The penalty for carrying a concealed weapon without a permit varies according to county.
- In California, permits to carry concealed weapons are issued by local sheriffs or police departments. Illegal possession of a concealed weapon is a misdemeanor.
- State law in Connecticut authorizes first selectmen, chiefs of police, and state police to issue permits for the possession of handguns. No distinction is made between concealed and unconcealed weapons. Violation of the statute is a felony with a maximum penalty of a \$1,000 fine and/or five years in prison.
- Delaware has a system of permits for carrying concealed weapons; however, few permits are actually issued. To obtain a permit, the applicant must show cause such as a demonstrated threat to his or her life or a job which involves transporting large sums of money. Permits are issued by state courts and the Attorney General's office. Carrying a concealed weapon without a permit is a felony.
- County commissions in Florida may issue permits for the possession of firearms, concealed or unconcealed. Carrying a concealed weapon without a permit is a felony, while carrying an unconcealed weapon without a permit is a misdemeanor. Counties set their own criteria for the issuance of permits.



Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4703

MAR 27 1984

ROBERT J. MILLER
DISTRICT ATTORNEY

REX BELL
ASSISTANT DISTRICT ATTORNEY

March 23, 1984

Representative John Liska
Pouch V
Juneau, Alaska 99801

Re: Carrying Concealed Weapon permits

Dear Representative Liska:

District Attorney Robert J. Miller has asked me, as his Assistant, to send you copies of our Carrying Concealed Weapon laws which I am hereby enclosing. The main law that could be of interest is 202.350 which covers more of the area that you are concerned with. The other statutes we have enclosed are simply for your information.

The Sheriff of our County has issued 639 Concealed Weapon permits to date. During this year he has pulled three (3) of these. The three were pulled generally on the basis that the individuals abused their privilege by flashing the weapon but not pulling it on anybody. In my experience, it is very unusual for us to pull any permits. Before a Concealed Weapon permit is issued, the persons are very carefully screened and we are very selective as to who gets a permit.

I hope that this information will be of help to you and if there is anything further that we can do for you, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Rex A. Bell".

REX A. BELL
ASSISTANT DISTRICT ATTORNEY

RAB:bkw

enclosures

cc: Robert J. Miller,
District Attorney

1003

MAR 20 1984
MAR 26 1984

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 26, 1984

SUBJECT: Permit for armed bodyguard
TO: Representative John Liska
FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether in our opinion AS 18.65.500 gives the Commissioner of Public Safety the authority to issue permits for armed bodyguards.

In my opinion it does not.

The section provides:

Sec. 18.65.500

USE OF ARMED BODYGUARDS.

A person who, in this state, hires another person to guard a person in this state with arms or deadly weapons, or a person who comes into this state armed with deadly weapons for the purpose of guarding a person, without a written permit from the commissioner of public safety, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than 60 days, or by a fine of not more than \$1,000, or by both.

It could be argued that the commissioner by implication is granted the power to issue permits because of the term "without a written permit from the Commissioner of Public Safety".

The more plausible argument is that the language is for the purpose of recognizing the possibility that other law may give the commissioner authority to issue permits and therefore this language prevents inconsistency.

Representative John Liska
Page 2
March 26, 1984

This is strengthened by the context in which the section was adopted. It was part of Chapter 59 Session Laws of Alaska 1976. The title was "Relating to the licensing of security guards and security guard agencies and providing for an effective date". The security guard provisions are Article 4 of AS 18.65 (Sec. 18.65.400-490) and the section involved is Article 5 of that chapter.

The context of the Act makes it clear the question of licensing was before the legislature so it appears the intent to restrict the use of armed bodyguards was controlling and the choice not to give power here to issue permits was intentional.

BGB:ojb
J5/008

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

April 2, 1984

The Honorable John J. Liska
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

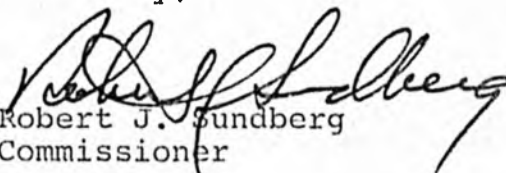
Dear Representative Liska:

This is in response to your inquiries about the relationship of issuing concealed weapon licenses by the Department as it relates to AS 18.65.500 "Use of Bodyguards."

This Department does not issue concealed weapon licenses under any circumstances. There is no provisions for doing so and the Department wishes it to remain that way.

Since the enactment of AS 18.65.500, there has been no known request for "a written permission," nor has anyone been arrested for violation of the statute. The statute makes reference to any arms or deadly weapon, but does not mention concealed.

Sincerely,


Robert J. Sundberg
Commissioner

Fiscal Note Analysis

This fiscal note is based upon the Alaska State Troopers experience with Security Guard Licensing and upon the Seattle Police Department's licensing experience for concealed weapons permits.

Processing of a security guard license requires approximately 45 minutes to 1 hour by an experienced clerk. Concealed weapons permit application processing should require at least this amount of time. The Seattle Police Department issues concealed weapons permits to approximately 1.6% of the city's population. These permits cover a two-year time period. Because of the more independent nature of Alaska's population, we estimate that approximately 2% of our state's population will request permits in the first year and 1.5% each year thereafter. A figure of 560,000 is used for our current population. Thus, it is estimated that approximately 11,200 permits will be processed during the first year and 8,400 in each succeeding year. Since it will require one hour to process each of the 11,200 permit requests received in the first year and there are 1,950 working hours in each State employee straight-time year, it will require 5.7 employees to implement the program. It is felt that four full-time employees and two six-month project employees can efficiently implement the program.

The costs in future years reflect the reduced work load and the project employees will not be required after the first year nor will any equipment be needed after the first year.

Other assumptions used in these calculations include a 6% cost increase in each year after FY 85, a \$50 permit cost to the applicant, that office space can be provided in Alaska State Troopers headquarters at no cost (dependent upon construction of the new Crime Lab and the resulting space availability), a two year permit period, that the legislation is enacted immediately thus allowing for the positions to be established effective 7/1/84 and a steady population count of approximately 560,000.

HB 647
 Concealed Weapon Permit

100 - Personal Services

	<u>SGT/PFT</u>	<u>CLERK V</u>	<u>CT II/PFT</u>	<u>CT II/PFT</u>	<u>CT II/NP</u>	<u>CT II/NP</u>
Salary	\$ 47,434	\$ 25,404	\$ 20,096	\$ 20,096	\$ 8,826	\$ 8,826
Benefits	12,016	4,553	3,602	3,602	724	724
SBS	2,550	1,557	1,232	1,232		
Ins.	2,612	2,728	2,728	2,728		
Total	\$ 64,612	\$ 34,242	\$ 27,658	\$ 27,658	\$ 9,550	\$ 9,550

Subtotal \$ 173,270

200 - Travel

Only minimal travel is anticipated for investigations and training. 2,000

300 - Contractual

Fingerprint processing - FBI - \$12.50 per card X 11,200 = 140,000
 Lease costs for ASPIN (AJIS) terminal lines \$292 X 12 = 3,504
 Lease costs for one economy size vehicle \$369 X 12 = 4,428
 Telephone/Postage estimated 7,000
 PSEA Cleaning Allowance for Sgt. 540
 PSEA Physical Exam 300
 Maintenance Agreements on Typewriters and ASPIN 825

Subtotal 156,597

400 - Supplies and Materials

Forms 10,000
 Miscellaneous office supplies (eg - typewriter ribbons, desk top commodities, etc.) 3,000

Subtotal 13,000

500 - Equipment

Desk, DP, 60" X 30" 469
 Chair, Executive 235
 ASPIN Terminal 8,194
 Dictating machine 100
 Bookcase 136
 2 X Side Chairs 216
 3 X Desk, with typing arms 1,718
 3 X Chairs, secretarial 816
 Typewriter, IBM 85 1,800
 2 X Typewriter, IBM Correcting Selectric 1,650
 8 X 4 Drawer, Letter size file cabinets 2,844
 3 X Side chairs 324
 Transcriber 900

Subtotal 19,402

Total \$ 364,269

1.	POSITION TITLE Sergeant P.S.			RANGE/STEP 78/A	BARG. UNIT PSEA	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.																																																																						
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.1	RP NUMBER	PCN NUMBER	BRU PRIORITY 1	LOCATION ERA	ELECTION DISTRICT	LEG.																																																																							
3.	CONTINUATION LEVEL	ADDITION	JUSTIFICATION																																																																												
4.	TYPE OF EXPENDITURE		AMOUNT																																																																												
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6.	Benefits	12,016																																																																													
7.	Supplemental Benefits	2,550																																																																													
8.	Fixed Benefits	2,612																																																																													
9.	TOTAL PERSONAL SERVICES	01	64,612																																																																												
10.	Travel	02																																																																													
11.	Contractual	03																																																																													
12.	Commodities	04																																																																													
13.	Equipment	05																																																																													
14.	Other																																																																														
15.	TOTAL COST		64,612																																																																												
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4A KEY NUMBER _____																																																																															

The State Trooper Sergeant is needed to head this small unit because of the expertise an individual in the job class has in background investigations, weapons familiarity and the legal aspects of weapons use. This individual will be responsible for developing, implementing and maintaining the concealed weapons permit program including developing regulations.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers
COMPONENT Director's Office

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Revised Date _____

1.	POSITION TITLE Clerk V				RANGE/STEP 11/A	BARG. UNIT APEA/GGU	FORM 12	PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.1	RP NUMBER	PCN NUMBER	BRU PRIORITY 2	LOCATION EBA	ELECTION DISTRICT		LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION						
4.	TYPE OF EXPENDITURE			AMOUNT							
	1	2	3								
	PERSONAL SERVICES										
5.	Salary	25,404									
6.	Benefits	4,553									
7.	Supplemental Benefits	1,557									
8.	Fixed Benefits	2,728									
9.	TOTAL PERSONAL SERVICES	01	34,242								
10.	Travel	02									
11.	Contractual	03									
12.	Commodities	04									
13.	Equipment	05									
14.	Other										
15.	TOTAL COST		34,242								
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts	1002								
17.		G.F. Match	1003								
18.		General Funds	1004	34,242							
19.		I-A Receipts	1005								
20.		Program Receipts	1028								
21.		Other									
FOR B&M USE ONLY											
4A KEY NUMBER _____											

Under the direction of the Sergeant in charge of the Concealed Weapons Permit Program this position will administer and supervise the full time and project employees working in the program. This position would also be responsible for developing a comprehensive knowledge of the program, to include fingerprinting in addition to general administrative duties. These duties would consist of organizing the the unit and providing control over permit files, their classification and cross referencing. This position would be responsible for procurement of of office supplies and materials necessary for the unit. This position would establish uniform correspondence based upon the individuals technical knowledge. Reconcile revenue received.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers
COMPONENT Director's Office

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1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7/A	BARG. UNIT APEA/GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.1	RP NUMBER	PCN NUMBER	BRU PRIORITY 3	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	20,096								
6.	Benefits	3,602								
7.	Supplemental Benefits	1,232								
8.	Fixed Benefits	2,728								
9.	TOTAL PERSONAL SERVICES	01	27,658							
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST		27,658							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		27,658						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
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BRU Alaska State Troopers
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1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7/A	BARG. UNIT APEA/GGU	FORM: 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 13.1	RP NUMBER	PCN NUMBER	BRU PRIORITY 4	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	20,096								
6.	Benefits	3,602								
7.	Supplemental Benefits	1,232								
8.	Fixed Benefits	2,728								
9.	TOTAL PERSONAL SERVICES	01		27,658						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST			27,658						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts	1002							
17.		G.F. Match	1003							
18.		General Funds	1004	27,658						
19.		I-A Receipts	1005							
20.		Program Receipts	1028							
21.		Other								
FOR B&M USE ONLY 4A KEY NUMBER _____										

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers
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1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7/A	BARG. UNIT APEA/GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION NP	STAFF MONTHS 6.0	RP NUMBER	PCH NUMBER	BRU PRIORITY 5	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.</p> <p>This six-month non-permanent position is needed during the initial phase of the program for the anticipated higher-than-normal workload. The cost will not be recurring.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	8,826								
6.	Benefits	724								
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01	9,550							
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST		9,550							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts	1002							
17.		G.F. Match	1003							
18.		General Funds	1004	9,550						
19.		1-A Receipts	1005							
20.		Program Receipts	1028							
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
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1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7/A	BARG. UNIT APEA/GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION NP	STAFF MONTHS 6.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 6	LOCATION EBA	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This position will be needed to process concealed weapons permits and perform, under close supervision, record checks. This position will utilize the ASPIN (AJIS) terminal to check for a criminal record. It will sort and process permit applications, records and reports. It will perform counter work requiring interpretation of available guidelines and requirements concerning permit applications. This position will secure, prepare and copy data, check figures, collect fees and tabulate necessary data.</p> <p>This six-month non-permanent position is needed during the initial phase of the program for the anticipated higher-than-normal workload. The cost will not be recurring.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	8,826								
6.	Benefits	724								
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01	9,550							
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST		9,550							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts	1002							
17.		G.F. Match	1003							
18.		General Funds	1004	9,550						
19.		I-A Receipts	1005							
20.		Program Receipts	1028							
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER										

13 REQUEST FOR
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PROGRAM Crime ID & Apprehension
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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 11, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU ALASKA 99811
PHONE: (907) 465-3600

The Honorable John J. Liska
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: Opinion on Article I, Section
19, Alaska Constitution

Dear Representative Liska:

The Attorney General has requested that I respond to your March 23, 1984, letter making inquiry about constitutional provisions addressing the right to bear arms. Specifically, you requested our opinion comparing the Alaska language pertaining to the right to bear arms with constitutional language found in the Washington State Constitution. Additionally, you wondered whether the provision in the United States Constitution protecting the right to bear arms conveys identical rights to the people as the provision in the Alaska Constitution.

The relevant provisions found in each constitution are as follows:

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Alaska Const. art. I, § 19.

The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

Wash. Const. Art. I, § 24.

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

U.S. Const. amend. II.

The language embodied in Alaska's constitution pertaining to arms is virtually identical, save for two changes in punctuation, to language found in amendment II to the U.S. Constitution. Amendment II to the U.S. Constitution was proposed by the congress on September 25, 1789, and became the law of the United States on December 15, 1791. The Washington constitutional provision was adopted in 1889 and the Alaska provision became operative with the formal proclamation of statehood on January 3, 1959.

During the intervening years since adoption of the United States, Washington, and Alaska constitutional arms provisions, numerous court cases have interpreted the constitutional language which establishes the right to bear arms. The Alaska Supreme Court has not had occasion to pass judgment on the exact nature of the rights contained in the Alaska Constitution, however the Washington Supreme Court has opined that the "constitutional guarantee of certain rights to certain individual citizens does not place such rights entirely beyond the police power of the state." State v. Gohl, 90 P. 259 (Wash. 1907). More specifically, the Washington Supreme Court found that the provision pertaining to the right to bear arms was "subject to reasonable regulation by the state under its police power." State v. Krantz, 164 P.2d 453 (Wash. 1945).

The contemporary judicial view in many jurisdictions does not regard amendment II to the United States Constitution as prohibiting or limiting the legislature's power to regulate the ownership or control of firearms. Whatever the scope of any common law or constitutional right to bear arms, it is not absolute and does not guarantee to individuals the right to carry weapons abroad at all times and in all circumstances. Application of Atkinson, 291 N.W. 2d 396 (Minn. 1980).

Because of the lack of case law in Alaska, we are unable to ascertain with any great certainty how the Alaska Supreme Court would construe article I, section 19, of the Alaska Constitution. It is possible that the Alaska courts would follow case law from other jurisdictions, which has held that the right to bear arms is subject to reasonable regulation under the state's police power.

The Honorable John J. Liska
Alaska State House of Representative

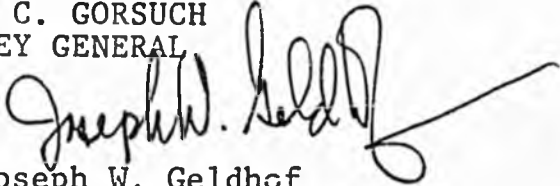
April 11, 1984
Page #3

Please contact us at your earliest convenience if we
can answer additional questions.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Joseph W. Geldhof
Assistant Attorney General

JWG:eer