

HB

104

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

*P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
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*Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

February 19, 1991

SUBJECT: CS's for HB 104

TO: Representative Dave Donley
Attn: Laurie Otto

FROM: John B. Gaguine *JBG*
Legislative Counsel

As you requested, enclosed are two proposed committee substitutes for HB 104. Version J retains the new offenses of felon connected misconduct involving weapons in the first and second degrees. Version M does not retain these, but places all felon-related weapons misconduct under AS 11.61.200, misconduct involving weapons in the first degree. Both versions make the other changes you requested.

If I may be of further assistance, please advise.

JBG:pl
91-095.plm

Enclosure

7-LS0010M ✓
Gaguine
2/20/91

**CS FOR HOUSE BILL NO. 104 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DONLEY, Ulmer, Barnes, C.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act defining defensive weapons and prohibiting their possession and use in certain
2 circumstances; and amending the criminal laws relating to misconduct involving weapons."

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

4 * Section 1. AS 11.41.500(a) is amended to read:

5 (a) A person commits the crime of robbery in the first degree if the person violates
6 AS 11.41.510 and, in the course of violating that section or in immediate flight thereafter, that
7 person or another participant

8 (1) is armed with a deadly weapon or a defensive weapon or represents by
9 words or other conduct that either that person or another participant is so armed;

10 (2) uses or attempts to use a dangerous instrument or represents by words or
11 other conduct that either that person or another participant is armed with a dangerous instrument;
12 or

13 (3) causes or attempts to cause serious physical injury to any person.

14 * Sec. 2. AS 11.56.300(a) is amended to read:

1 (a) One commits the crime of escape in the first degree if, without lawful authority, one
2 removes oneself from official detention by means of a deadly weapon or a defensive weapon.

3 * Sec. 3. AS 11.56.375(a) is amended to read:

4 (a) A person commits the crime of promoting contraband in the first degree if the person
5 violates AS 11.56.380 and the contraband is

6 (1) a deadly weapon or a defensive weapon;

7 (2) an article that is intended by the defendant to be used as a means of
8 facilitating an escape; or

9 (3) a controlled substance.

10 * Sec. 4. AS 11.61.200(a) is amended to read:

11 (a) A person commits the crime of misconduct involving weapons in the first
12 degree if the person

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

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

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

20 (4) knowingly sells or transfers a firearm to another whose physical or mental
21 condition is substantially impaired as a result of the introduction of an intoxicating liquor or
22 controlled substance [DRUG] into that other person's body;

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

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

28 (7) violates AS 11.46.320 and, during the violation, possesses on the person a
29 firearm when the person's physical or mental condition is impaired as a result of the
30 introduction of an intoxicating liquor or controlled substance into the person's body
31 [WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR DRUG];

1 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on
2 premises or in a propelled vehicle in violation of a provision of an order issued under
3 AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive
4 weapon or a deadly weapon, other than an ordinary pocketknife; [OR]

5 (9) communicates in person with another in violation of AS 11.61.120(a)(6) and,
6 during the communication, possesses on the person a defensive weapon or a deadly weapon,
7 other than an ordinary pocketknife; or

8 (10) knowingly resides in a dwelling where there is a firearm capable of being
9 concealed on one's person, a prohibited weapon, or a semi-automatic firearm if the person
10 has been convicted of a felony by a court of this state, a court of the United States, or a
11 court of another state or territory.

12 * Sec. 5. AS 11.61.200(b) is amended to read:

13 (b) It is an affirmative defense to a prosecution under (a)(1), (2), or (10) [(a)(1) OR (2)]
14 of this section that

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

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

19 (3) a period of 10 [FIVE] years or more has elapsed between the date of the
20 person's unconditional discharge on the prior offense and the date of the possession, sale, or
21 transfer of the firearm or the date of the person's residing in a dwelling listed in (a)(10) of
22 this section, and the prior conviction did not result from a violation of AS 11.41 or of a
23 similar law of the United States or of another state or territory.

24 * Sec. 6. AS 11.61.200(e) is amended to read:

25 (e) As used in this section,

26 (1) "prohibited weapon" means any

27 (A) explosive, incendiary, or noxious gas

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

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

- 1 (iii) bomb; or
2 (iv) grenade;
3 (B) device designed, made, or adapted to muffle the report of a firearm;
4 (C) [METAL KNUCKLES;
5 (D) SWITCHBLADE OR GRAVITY KNIFE;
6 (E)] firearm that is capable of shooting more than one shot automatically,
7 without manual reloading, by a single function of the trigger; or
8 (D) [(F)] rifle with a barrel length of less than 16 inches, shotgun with a
9 barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as
10 modified, has an overall length of less than 26 inches;

11 (2) "semi-automatic firearm" means a firearm designed or specifically
12 adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready
13 to fire, with a single function of the trigger or firing mechanism;

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

15 * Sec. 7. AS 11.61.210(a) is amended to read:

16 (a) A person commits the crime of misconduct involving weapons in the second degree
17 if the person

18 (1) possesses on the person a firearm when the person's physical or mental
19 condition is impaired as a result of the introduction of an intoxicating liquor or a controlled
20 substance into the person's body [WHILE UNDER THE INFLUENCE OF AN
21 INTOXICATING LIQUOR OR DRUG] in circumstances other than described in
22 AS 11.61.200(a)(5) [AS 11.61.200(a)(7)];

23 (2) discharges a firearm from, on, or across a highway; [OR]

24 (3) discharges a firearm with reckless disregard for a risk of damage to property
25 or a risk of physical injury to a person;

26 (4) manufactures, possesses, transports, sells, or transfers metal knuckles; or

27 (5) manufactures, sells, or transfers a switchblade, a gravity knife, or a
28 butterfly knife.

29 * Sec. 8. AS 11.61.220(a) is amended to read:

30 (a) A person commits the crime of misconduct involving weapons in the third degree if
31 the person

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

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

5 (3) being an unemancipated minor under 16 years of age, possesses a firearm
6 without the consent of a parent or guardian of the minor;

7 (4) knowingly possesses a loaded firearm within the grounds of or on a
8 parking lot immediately adjacent to a public or private preschool, elementary, junior high,
9 or secondary school, without the permission of the chief administrative officer of the school
10 or district or the designee of the chief administrative officer; or

11 (5) possesses or transports a switchblade, a gravity knife, or a butterfly knife.

12 * Sec. 9. AS 11.61.220(c) is amended to read:

13 (c) The provisions of (a)(1), [AND] (2), and (4) of this section do not apply to a peace
14 officer acting within the scope and authority of the officer's employment.

15 * Sec. 10. AS 11.81.900(b) is amended by adding a new paragraph to read:

16 (58) "defensive weapon" means an electric stun gun, or a device to dispense
17 mace, pepper, or a similar chemical agent, that is not designed to cause death or serious physical
18 injury.

19 * Sec. 11. AS 11.61.215 is repealed.

CS FOR HOUSE BILL NO. 104 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
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6 AS 11.41.510 and, in the course of violating that section or in immediate flight thereafter, that
7 person or another participant

8 (1) is armed with a deadly weapon or a defensive weapon or represents by
9 words or other conduct that either that person or another participant is so armed;

10 (2) uses or attempts to use a dangerous instrument or represents by words or
11 other conduct that either that person or another participant is armed with a dangerous instrument;

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13 (3) causes or attempts to cause serious physical injury to any person.

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4 (a) A person commits the crime of promoting contraband in the first degree if the person
5 violates AS 11.56.380 and the contraband is

6 (1) a deadly weapon or a defensive weapon;

7 (2) an article that is intended by the defendant to be used as a means of
8 facilitating an escape; or

9 (3) a controlled substance.

10 * Sec. 4. AS 11.61.200(a) is amended to read:

11 (a) A person commits the crime of misconduct involving weapons in the first degree if
12 the person

13 (1) [KNOWINGLY POSSESSES A FIREARM CAPABLE OF BEING CON-
14 CEALED ON ONE'S PERSON AFTER HAVING BEEN CONVICTED OF A FELONY BY A
15 COURT OF THIS STATE, A COURT OF THE UNITED STATES, OR A COURT OF
16 ANOTHER STATE OR TERRITORY;

17 (2) KNOWINGLY SELLS OR TRANSFERS A FIREARM CAPABLE OF
18 BEING CONCEALED ON ONE'S PERSON TO A PERSON WHO HAS BEEN CONVICTED
19 OF A FELONY BY A COURT OF THIS STATE, A COURT OF THE UNITED STATES, OR
20 A COURT OF ANOTHER STATE OR TERRITORY;

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

22 (2) [(4)] knowingly sells or transfers a firearm to another whose physical or
23 mental condition is substantially impaired as a result of the introduction of an intoxicating liquor
24 or controlled substance [DRUG] into that other person's body;

25 (3) [(5)] removes, covers, alters, or destroys the manufacturer's serial number on
26 a firearm with intent to render the firearm untraceable;

27 (4) [(6)] possesses a firearm on which the manufacturer's serial number has been
28 removed, covered, altered, or destroyed, knowing that the serial number has been removed,
29 covered, altered, or destroyed with the intent of rendering the firearm untraceable;

30 (5) [(7)] violates AS 11.46.320 and, during the violation, possesses on the person
31 a firearm when the person's physical or mental condition is impaired as a result of the

1 introduction of an intoxicating liquor or a controlled substance into the person's body
2 [WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR DRUG];

3 (6) [(8)] violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully
4 on premises or in a propelled vehicle in violation of a provision of an order issued under
5 AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive
6 weapon or a deadly weapon, other than an ordinary pocketknife; or

7 (7) [(9)] communicates in person with another in violation of AS 11.61.120(a)(6)
8 and, during the communication, possesses on the person a defensive weapon or a deadly
9 weapon, other than an ordinary pocketknife.

10 * Sec. 5. AS 11.61.200(c) is amended to read:

11 (c) It is an affirmative defense to a prosecution under (a)(1) [(a)(3)] of this section that
12 the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in
13 accordance with registration under 26 U.S.C. 5801 - 5872 (National Firearms Act).

14 * Sec. 6. AS 11.61.200(d) is amended to read:

15 (d) The provisions of (a)(1) [(a)(3)] of this section do not apply to a peace officer acting
16 within the scope and authority of the officer's employment.

17 * Sec. 7. AS 11.61.210(a) is amended to read:

18 (a) A person commits the crime of misconduct involving weapons in the second degree
19 if the person

20 (1) possesses on the person a firearm when the person's physical or mental
21 condition is substantially impaired as a result of the introduction of an intoxicating liquor
22 or a controlled substance into the person's body [WHILE UNDER THE INFLUENCE OF AN
23 INTOXICATING LIQUOR OR DRUG] in circumstances other than described in
24 AS 11.61.200(a)(5) [AS 11.61.200(a)(7)];

25 (2) discharges a firearm from, on, or across a highway; [OR]

26 (3) discharges a firearm with reckless disregard for a risk of damage to property
27 or a risk of physical injury to a person;

28 (4) manufactures, possesses, transports, sells, or transfers metal knuckles; or

29 (5) manufactures, sells, or transfers a switchblade, a gravity knife, or a
30 butterfly knife.

31 * Sec. 8. AS 11.61.220(a) is amended to read:

1 (a) A person commits the crime of misconduct involving weapons in the third degree if
2 the person

3 (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife
4 or a defensive weapon, that is concealed on the person;

5 (2) knowingly possesses a loaded firearm on the person in any place where
6 intoxicating liquor is sold for consumption on the premises; [OR]

7 (3) being an unemancipated minor under 16 years of age, possesses a firearm
8 without the consent of a parent or guardian of the minor;

9 (4) knowingly possesses a loaded firearm within the grounds of or on a
10 parking lot immediately adjacent to a public or private preschool, elementary, junior high,
11 or secondary school, without the permission of the chief administrative officer of the school
12 or district or the designee of the chief administrative officer; or

13 (5) possesses or transports a switchblade, a gravity knife, or a butterfly knife.

14 * Sec. 9. AS 11.61.220(c) is amended to read:

15 (c) The provisions of (a)(1), [AND] (2), and (4) of this section do not apply to a peace
16 officer acting within the scope and authority of the officer's employment.

17 * Sec. 10. AS 11.61 is amended by adding new sections to read:

18 Sec. 11.61.225. FELON CONNECTED MISCONDUCT INVOLVING WEAPONS IN
19 THE FIRST DEGREE. (a) A person commits the crime of felon connected misconduct
20 involving weapons in the first degree if the person, having been convicted of a felony by a court
21 of this state, a court of the United States, or a court of another state or territory, manufactures,
22 possesses, transports, sells, or transfers

23 (1) a firearm capable of being concealed on one's person;

24 (2) a prohibited weapon; or

25 (3) a semi-automatic firearm.

26 (b) Felon connected misconduct involving weapons in the first degree is a class B felony.

27 Sec. 11.61.226. FELON-CONNECTED MISCONDUCT INVOLVING WEAPONS IN
28 THE SECOND DEGREE. (a) A person commits the crime of felon-connected misconduct
29 involving weapons in the second degree if the person

30 (1) knowingly sells or transfers a semi-automatic firearm or a firearm capable of
31 being concealed on one's person to a person who has been convicted of a felony by a court of

1 this state, a court of the United States, or a court of another state or territory; or

2 (2) knowingly resides in a dwelling where there is a weapon listed in
3 AS 11.61.225(a) if the person has been convicted of a felony by a court of this state, a court of
4 the United States, or a court of another state or territory.

5 (b) Felon connected misconduct involving weapons in the second degree is a class C
6 felony.

7 Sec. 11.61.227. DEFENSES. It is an affirmative defense to a prosecution under
8 AS 11.61.225 or 11.61.226 that

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

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

13 (3) a period of 10 years or more has elapsed between the date of the person's
14 unconditional discharge on the prior offense and the date of the violation of AS 11.61.225 or
15 11.61.226, and the prior conviction did not result from a violation of AS 11.41 or of a similar
16 law of the United States or of another state or territory.

17 * Sec. 11. AS 11.61 is amended by adding a new section to read:

18 Sec. 11.61.260. DEFINITIONS. In AS 11.61.200 - 11.61.260,

19 (1) "prohibited weapon" means any

20 (A) explosive, incendiary, or noxious gas

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

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

25 (iii) bomb; or

26 (iv) grenade;

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

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

30 (D) rifle with a barrel length of less than 16 inches, shotgun with a barrel
31 length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified,

1 has an overall length of less than 26 inches;

2 (2) "semi-automatic firearm" means a firearm designed or specifically adapted to
3 fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a
4 single function of the trigger or firing mechanism;

5 (3) "unconditional discharge" has the meaning given in AS 12.55.185.

6 * Sec. 12. AS 11.81.900(b) is amended by adding a new paragraph to read:

7 (58) "defensive weapon" means an electric stun gun, or a device to dispense
8 mace, pepper, or a similar chemical agent, that is not designed to cause death or serious physical
9 injury.

10 * Sec. 13. AS 11.61.200(b), 11.61.200(e), and 11.61.215 are repealed.

BILL NO: HB 104

DATE: February 8, 1991

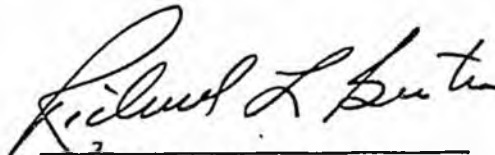
TITLE: Relating to Misconduct
Involving Weapons

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY
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HB 104 makes several changes to Alaska's weapons laws. Overall, the Department of Public Safety supports HB 104. We have concerns about a few aspects of the bill, discussed below:

1. In sec. 4 (page 2, line 31, page 3, lines 1 and 2) and sec. 7 (page 3, lines 21 - 24) the new language "Substantially impaired", appears to be a higher standard than that of "under the influence" of an intoxicating liquor. Perhaps the existing definition in AS 11.61.215 could be modified so that these offenses (including potentially dangerous domestic violence confrontations) would be easier to prove.
2. At page 3, line 30 and page 4, line 14 add "throwing star" to the list of weapons which may not be manufactured or possessed.
3. At least as regards convicted felons, the penalty for possession of a switchblade and other prohibited knives should not be dropped from the present C felony to a class B misdemeanor. The Department suggests that this be at least an A misdemeanor offense.



Richard L. Burton
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 104

Revision Date: _____
Title: An Act defining definsive weapons & prohibiting their possession & use
Sponsor: Rep. Donley
Requestor: House Judic. Comm.

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachment

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact _____

ANALYSIS: (Attach a separate page if necessary)
No substantial fiscal impact on the Alaska State Troopers is expected.

Prepared by: Gavle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: February 8, 1991
Approved by Commissioner: *G. A. Horetski, Dep. Comm.*
Agency: Department of Public Safety Date: 2-8-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 11, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 104 ("Use and Possession of Defensive and Deadly
Weapons")

Dear Representative Donley:

By letter dated January 31, 1991, you have asked us whether we believe there are any "legal, constitutional, policy, or practical problems" with the above-referenced bill. You have also asked whether we support or oppose the bill.

We do not believe that there are any legal or constitutional problems with this bill and we support most of its provisions. There are some, however, as to which we either have no objection or we take no position. Furthermore, there are two proposed amendments that we find troublesome.

We support:

clarifying the law on "defensive weapons"

making it a crime (class B felony) for felons to possess (for some period of time following conviction) semi-automatic firearms

making it a crime (class C felony) to sell a semi-automatic firearm to a felon

prohibiting felons from living where firearms and prohibited weapons are located during the period that they are banned from possessing these weapons

adding "butterfly knives" to the list of prohibited knives

These proposals address "gaps" in existing law and are consistent with the intent of our current laws.

We have no objection to:

making it a crime (class B misdemeanor) to possess firearms on school grounds

making the ban on felons possessing concealable firearms, semi-automatic firearms, and prohibited weapons permanent when the felon's conviction was for a violent crime

otherwise, increasing to ten years the period of time during which felons are banned from possessing these weapons

We take no position with respect to:

increasing the level of offense to a class B felony for felons to possess (for some period of time following conviction) concealable firearms and prohibited weapons

reducing the penalty for selling or possessing metal knuckles, or for selling switchblades and other prohibited knives, from a class C felony to a class A misdemeanor

reducing the penalty for possessing switchblades and other prohibited knives from a class C felony to a class B misdemeanor

We are concerned, however, by the bill's proposals that weaken existing law regulating the possession of firearms by intoxicated persons. AS 11.61.200(a)(1) makes it a misdemeanor to possess a firearm while under the influence of an intoxicating liquor or drug. AS 11.61.200(a)(7) makes it a felony to commit criminal trespass while intoxicated and in possession of a firearm. HB 104 proposes changing each statute's requirement that the person be "under the influence of an intoxicating liquor or drug" to instead require that the person's "physical or mental condition [be] substantially impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body."

It is more difficult for the state to prove that a person's condition is "substantially impaired" than it is to prove that the person is "under the influence," which is defined in AS 11.61.215 as occurring when the person's "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." It is not apparent to us why this change is being

The Honorable Dave Donley

February 11, 1991
Page 3

proposed and, in the absence of additional information, we oppose the change.

Once again, however, we support most of this bill's provisions, believing that they will help prevent crime and improve our justice system. Thank you for the opportunity to comment on this bill. If you have any further questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK:me-018

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE: 465-4322

February 21, 1991

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 104, An Act Relating to
Weapons

Dear Representative Donley:

At the House Judiciary Committee meeting regarding HB 104 last week, a representative of the National Rifle Association suggested that state law be amended so that it would no longer be against the law for a person to possess metal knuckles, a switch blade knife, or a gravity knife. You asked me to let you know the position of the Department of Public Safety regarding this proposal.

Briefly stated, the Department of Public Safety opposes the "decriminalization" of these weapons. These weapons are not tools, as are fishing/hunting knives. Neither are they ordinary pocket knives that could be used as letter openers or fingernail parers. These are dangerous weapons because they can be folded or closed and concealed on the person, but can be brought into play instantly through the pressing of a mechanical spring switch or by a flick of the wrist. A person may seem unarmed, yet in a heartbeat become dangerously armed. The act of producing a mechanical knife from some concealed place and activating the mechanism itself involves a high degree of intimidation.

The Department of Public Safety supports the present bill's inclusion of a butterfly knife as a form of prohibited weapon; butterfly knives are merely another, more complex, form of gravity knife. We also encourage you to add "throwing star" to the list of prohibited weapons. Throwing stars are discs approximately three or four inches in diameter, of the weight and thickness of an average knife blade. They are cut into "star" shapes and have six to eight points. The points are sharp, and if the star is

The Honorable Dave Donley

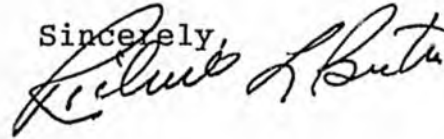
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February 21, 1991

thrown, it spins, "frisbee" style. The star can be thrown short distances with some accuracy. The points are sharp, and the star "sticks" when thrown. Such a weapon could be very dangerous, and we are aware of no legitimate sporting or recreational use for such a device.

I hope this will be of assistance to the Committee during its consideration of HB 104.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard L. Burton".

Richard L. Burton
Commissioner

cc: Lori Nottingham
Governor's Office

Margo Knuth
Department of Law

ANCHORAGE POLICE DEPARTMENT
FAX MESSAGE
TO BE RUN

HB 104

DATE: 02-25-91

TO: FAX NUMBER:

465-4565

NAME:

House Judiciary Att: Lauri Otto

FROM:

Duane Ullmann
Anchorage Police Dept.

NUMBER OF PAGES

9

INCLUDING COVER SHEET

COMMENTS:

These are all of our ordinance concerning
weapons. Call if you have a question.

8.05.060 Child abuse.

- A. It is unlawful for any person to commit child abuse.
- B. A person commits child abuse if he knowingly, intentionally or negligently and without justifiable excuse causes or permits a child to be:
1. placed in a situation that may endanger its life or health; or
 2. abandoned, tortured, cruelly confined or cruelly punished; or
 3. deprived of necessary food, clothing or shelter.
- C. In this section, "child" means a person under the age of 16 years. (CAC 8.47.010).

8.05.070 Concealed weapon.

- A. It is unlawful for any person to carry concealed about his person in any manner:
1. a revolver, pistol or other firearm; or
 2. a knife (other than an ordinary pocket knife), or a dirk or dagger; or
 3. a slingshot, metal knuckles, club, billy, blackjack or any other instrument or thing the principal purpose or use of which is as a weapon; or
 4. any other instrument or thing which, because of the manner in which it is concealed and the accompanying circumstances, could reasonably be construed as being kept as a weapon or in order to achieve some violent purpose, and by which injury could be inflicted upon the person of another.
- B. Upon conviction of violation of subsection A.1 of this section, the defendant shall be sentenced to no less than five days in jail, which term of imprisonment may be neither suspended nor deferred.
- C. This section shall not apply to peace officers. (Adapted from AS 11.55.010-.020).

8.05.080 Consuming liquor in public place.

- A. It is unlawful for any person to consume any alcoholic beverage on the traveled portion of any public street,

complaint or citation for violation of any state law or municipal ordinance to provide such officer with false information concerning the person's name, address, driver's license, date of birth, or any other matter necessary to proper issuance of the citation or complaint. (GAAB 18.05.030, am AO 82-134).

8.05.210 False bomb report.

It is unlawful for any person to:

- A. Report to any police officer, prosecutor, employee of a fire department or fire service, district attorney, newspaper, radio station, television station, assistant district attorney, employee of an airline, airport, railroad or bus line, employee of a telephone company, occupants of a building, or a news reporter in the employ of a newspaper or radio or television station that a bomb or other explosive device has been placed or secreted in any public or private place, knowing that such report is false.
- B. Maliciously inform any other person that a bomb or other explosive device has been placed or secreted in any public or private place, knowing that such information is false. (Adapted from CPC 148.1).

8.05.220 False pretenses--Obtaining money by.

It is unlawful for any person to obtain money, property or other things of value, including but not limited to the use of coin vending devices, or the use of any public utility service:

- A. By false pretenses or representations, whether oral, written or otherwise; or
- B. By use of any device or means by which the use of any such machine or service is secured without paying or contracting to pay the established consideration therefor; or
- C. When the consideration therefor is charged to another person without the authorization or subsequent consent of the person. (Adapted from GAAB 18.05.010KK).

8.05.240 Firearms--Discharging of.

A. It is unlawful for any person to:

- 1. shoot, discharge or flourish any firearm, air rifle or air pistol from or upon a public road or highway;

2. flourish, point or discharge a firearm, air rifle or air pistol in the former City or Spenard service areas or other urban area or in or on any means of public transportation, or in or near a park or public grounds, or at a public place, whether public in itself or made public at the time by an assemblage of people, except in those areas open to the public for lawful hunting or upon established shooting ranges;
 3. discharge or shoot a pistol or other firearm, air rifle or air pistol into, in, through or against a dwelling, house, schoolhouse, church building, factory, storehouse, courthouse or a house or building used for manufacturing purposes, or any house or building used for the assembling of people for business or pleasure;
 4. have in his possession or under his control, or use or discharge, a firearm while such person is under the influence of intoxicating liquor or a narcotic, stimulant, hallucinogenic or depressant drug.
- B. This section shall not apply to any officer of the United States, the State of Alaska or the municipality who is authorized to use firearms in the enforcement of any law or ordinance and who is actually engaged in such enforcement. (Adapted from AS 11.55.050-.070 and GAAB 18.05.010D).

8.05.250 Firearms on licensed premises.

- A. It is unlawful for any person to have in his possession or control any firearm on premises licensed for the sale of alcoholic beverages for consumption, or for any person to conceal a firearm on licensed premises.
- B. Subsection A of this section shall not apply to the owner of the premises, or to an employee of the premises while performing his duties, or to a peace officer. (new, am AO 79-24).

8.05.270 Fireworks.

It is unlawful for any person to sell, possess or use any explosive fireworks or stench bomb to which fuses are attached or which are capable of ignition by matches or percussion, without permission of that municipal official charged with issuing permits for such activities. This section does not apply to sale, possession or use of highway or other warning flares, or of ammunition for firearms unless used for other than their intended purposes. (Adapted from GAAB 18.05.010Y and new).

Submitted by: Chairman of the Assembly
at the Request of the Mayor

Prepared by: Department of Law

For reading: September 18, 1990 *MM*

APPROVED
Date: 10-9-90

ANCHORAGE, ALASKA
AO NO. 90- 122

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING
TITLE 8 OF THE ANCHORAGE MUNICIPAL CODE AND PERTAINING TO
FIREARMS ON SCHOOL GROUNDS

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. That a new section of the Anchorage
Municipal Code to be numbered 8.05.255 is hereby enacted to
read as follows:

8.05.255 Firearms on School Grounds.

A. It is unlawful for any person to have in his possession
or control within the grounds of or on a parking lot
immediately adjacent to a public or private preschool,
elementary, junior high or secondary school:

1. A revolver, pistol, or other firearm, or
2. A switchblade, gravity or any knife other than a
folded pocket knife (one which requires the bearer
to physically pull the blade from the handle before
it can be used), or a dirk or dagger; or
3. A slingshot, metal knuckles, club, billy,
blackjack, or other instrument or thing the princi-
pal purpose or use of which is as a weapon.

B. Subsection A of this section shall not apply to peace
officers or persons who have express authorization of
the Anchorage School District Superintendent or his
designee or, in the case of a private or religious
school, express authorization of the chief administrative
officer of that school.

Section 2. That Anchorage Municipal Code section
8.50.010.B is hereby amended to read as follows:

B. . . .

1. . . .

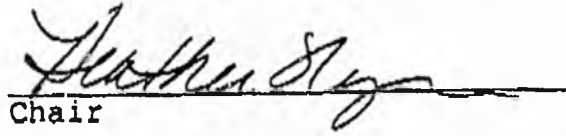
2. . . .

3. 8.05.170 through [8.05.250] 8.05.255;

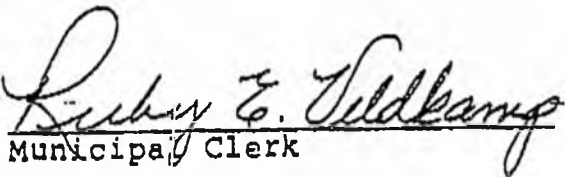
. . .

PASSED AND APPROVED by the Anchorage Assembly this 9th

day of October, 1990.


Chair

NOTES:


Municipal Clerk

MAG/cre
(Legal/G:FIRE3-4)

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- e. lewd exhibition of the genitals or public area of any person. (AC 77-332A).

8.05.430 Minors--Sale of firearms to.

It is unlawful for any person to give, barter, sell, lease or otherwise make available to any person under the age of 18 years any firearm, including but not limited to pistols, rifles and shotguns, or any ammunition therefor, without consent of the parent or guardian of the minor. (Adapted from GAAB 18.05.060).

8.05.440 Minors--Curfew.

- A. It is unlawful for any person under 16 years of age to be upon the public streets, alleys, parks, public buildings, places of amusement and entertainment, vacant lots, or other unsupervised places, between the hours of 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday, during school term, and 11:00 p.m. otherwise, and 5:00 a.m. of any day, unless such person shall be accompanied by and in the charge of his/her parent or other competent and adult person, or upon an emergency errand or at the direction of his or her parent, guardian or other adult person having the care and custody of the minor.
- B. It is unlawful for any parent, guardian or other person having custody and control of children under the age of 16 years to allow such child to go or be upon any public street, or other places as listed in this section, between the hours of 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday, during school term, and 11:00 p.m. otherwise, and 5:00 a.m. of any day, unless such child shall be accompanied by his/her parent or other competent and adult person, or is upon an emergency errand or at the direction of his or her parent, guardian or other adult person having the care and custody of the minor.
- C. In any prosecution for the violation of any provision of this section, the presence of any person under 16 years of age, unattended as herein required, upon any of the public streets or other places as listed in this section shall be deemed prima facie evidence of the guilt of such parent of the violation of the provisions hereof. (Adapted from GAAB 18.05.070).

8.05.450 Minors--Sale of tobacco products to.

It is unlawful for any person to sell cigarettes, cigars or tobacco in any form to any person under 18 years of age. (GAAB 18.05.010X).

- E. It is unlawful for the driver of any motor vehicle to willfully fail or refuse to bring his or her vehicle to a stop, or otherwise attempt to elude a pursuing police vehicle, when given visual or audible signal to bring his or her vehicle to a stop by a police officer. The signal given by such police officer may be by hand, voice, emergency light or siren, and the officer giving such signal shall be in uniform and his or her vehicle shall display an emergency light or siren. (Adapted from CPC 102, 148, and 148.2, am AO 82-126).

8.05.550 Shoplifting--Removal and concealment of merchandise.

- A. Removal of merchandise. It is unlawful for any person to take or remove any merchandise or thing of value from the premises where such merchandise or thing of value is kept for purposes of sale, barter or storage without the consent of the owner or person lawfully entitled to its possession.
- B. Concealment of merchandise. It is unlawful for any person, without authority, willfully to conceal upon or about his person any merchandise or thing of value upon the premises where such merchandise or thing of value is kept for the purposes of sale, barter or storage. Any merchandise or thing of value found concealed upon or about the person and which has not theretofore been purchased by the person is prima facie evidence of willful concealment.
- C. Consent. As used in this section, "consent" shall mean express consent, or consent implied by possession of a sales ticket, slip or receipt issued for and accompanied by the article or articles of merchandise or thing or things of value. (Adapted from GAAB 18.05.040).

8.05.560 Solicitation to illegal act.

It is unlawful to solicit a person for the purpose of committing any illegal act. (GAAB 18.05.010R).

8.05.580 Switchblade knives.

It is unlawful for a person to sell, offer for sale, display or carry about his person, a knife which has a blade which can be opened by a spring mechanism, exertion of pressure on the handle, or by gravity. This section does not apply to any officer of the United States, the State of Alaska or the municipality whose carrying or displaying of such a knife is necessary in the course of his official duties. (Adapted from CAC 8.50.010 and new).

unless a notice waiving the necessity for such report is posted in the facility by the owner or his agent.

- B. In this section, "occupied" means that the premises is being used by one or more persons entitled to its enjoyment and use, and this includes actual as well as constructive occupancy. (Adapted from AS 11.20.135).

8.05.660 Vehicle--Tampering with.

It is unlawful for any person, either individually or in concert with one or more other persons, willfully to:

- A. Injure or tamper with any motor vehicle or the contents thereof, or to break or remove any part of a vehicle, without the consent of the owner; or
- B. With the intent to commit malicious destruction or injury, or any other crime, climb into or upon a motor vehicle; or
- C. With the intent to commit malicious destruction or injury, or any other crime, attempt to manipulate or actually manipulate any mechanism or device which is part of a motor vehicle which is at rest and unattended; or
- D. With the intent to commit malicious destruction or injury, or any other crime, set in motion any vehicle while the same is at rest and unattended. (Adapted from CVC 10852 and 10853).

8.05.670 Weapon--Possession of with intent to assault.

It is unlawful for any person to have upon or about him any dangerous weapon with intent to assault another. (Adapted from CPC 467).

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 26, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 104 (Defensive Weapons/Misconduct Inv. Weapons)

Dear Representative Donley:

You have asked us to address three issues that arose at the House Judiciary Committee hearing on February 22, 1991, relating to HB 104 ("An Act defining defensive weapons and prohibiting their possession and use in certain circumstances; and amending the criminal laws relating to misconduct involving weapons"). Our responses are as follows.

First, the Committee requested proposed language that would make it a crime for a person to possess a firearm in a motor vehicle while under the influence of an intoxicating liquor or drug. This is not a crime under existing law because the statute, AS 11.61.210(a)(1), only prohibits an intoxicated person from possessing a firearm "on the person." We suggest the following amendment to AS 11.61.210(a)(1), at page 3, line 21, of HB 104:

(1) possesses on the person or in a motor vehicle a firearm

Second, the Committee expressed interest in language that would create a limited exception to the proposed prohibition against possessing firearms on school grounds to allow parents or other adults to possess firearms in their vehicles when picking children up from school. We suggest that HB 104 be amended at page 4, line 13, to add language as follows:

the designee of the chief administrative officer except that a person 18 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a locked container within the vehicle; or

Third, the Committee requested more information about "butterfly knives." Our court of appeals has addressed knives as

prohibited weapons on several occasions. In State v. Weaver, 736 P.2d 781 (Alaska App. 1987), the court noted:

The pertinent characteristics which a switchblade and a gravity knife have in common are that they are easily concealed and quickly brought to bear. These characteristics are indicative of knives which are used as weapons rather than tools. Some utility knives are quickly brought to bear, such as a fishing knife or hunting knife in a sheaf, but are not easily concealed. ... An ordinary pocket knife may be concealed upon the person.... However, an ordinary pocketknife is incapable of being quickly brought to bear.

736 P.2d at 782-83 (footnote omitted). In State v. Strange, 785 P.2d 563, 565 (Alaska App. 1990), the court recited testimony presented at a superior court hearing that butterfly knives are "primarily used in the martial arts and in combat." The knives can be "easily concealed on the body and [can] quickly be brought to bear by a series of wrist movements utilizing centrifugal or inertial force." Id.

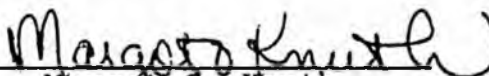
When speaking informally with the owner of a local weapons shop, I was advised that there is no utilitarian purpose to the butterfly knife in Alaska. According to that weapons dealer, their foremost purpose seems to be to "impress people," most often "other kids." I also spoke with Investigator Johnston of the Alaska State Troopers office in Anchorage, who is a weapons expert. He similarly voiced the opinion that butterfly knives are principally used in this state by "kids" and mostly to impress or intimidate each other. Officer Jennings of the Juneau Police is a weapons expert in this community and he indicates that butterfly knives are most useful for "stabbing" and "slashing," in part because of their double-edged blade.

If you have any further questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: _____


Margot O. Knuth
Assistant Attorney General



TELECOPY COVER SHEET
Juneau Legislative Information Office

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FROM: House Judiciary PHONE: 465-4990

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HB 104 + Rupp's letter

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SENT BY: _____



NATIONAL RIFLE ASSOCIATION OF AMERICA
INCORPORATED 1871

1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

RUPE ANDREWS
FIELD REPRESENTATIVE
ALASKA

9416 LONGRUN DRIVE
JUNEAU AK 99801
907/789-7422

March 13, 1991

Representative Dave Donley
Chairman, House Judiciary Committee
Alaska House of Representatives
Capitol Building
Juneau, AK 99801

Dear Representative Donley:

This letter is to express the support of the National Rifle Association for CS HB-104. I have appreciated the close working relationship with your committee and staff in the markup and committee discussions of CS HB-104.

My personal thanks to you and staffer Ms. Laurie Otto for your sincere consideration of the NRA's input to this statute. I believe that you have accomplished the goal of the Judiciary Committee in strengthening the weapons statute and the penalties for violation.

Sincerely,

Rupe Andrews, Field Representative, Alaska

ty. Thus, the state's sentence appeal can be treated, on appellate review, as the equivalent of a petition for review under Appellate Rule 402(b)(2) and (3). *State v. Price*, 715 P.2d 1183, 1185-86 (Alaska App. 1986). The double jeopardy clauses of the United States and Alaska Constitutions do not preclude us from vacating the sentences, and ordering the sentencing judge to impose the full mandatory minimum sentence and fine on both Knutson and Gudmundson. *State v. LaPorte*, 672 P.2d 466, 468 (Alaska App.1983).

Therefore, we AFFIRM the convictions, but VACATE the sentences. The case is REMANDED for resentencing for the imposition of the full mandatory minimum sentence and fine on both Knutson and Gudmundson.

BRYNER, C.J., not participating.



STATE of Alaska, Appellant,

v.

Mark A. WEAVER, Appellee.

Mark A. WEAVER, Appellant

v.

STATE of Alaska, Appellee.

A-1584, A-1616.

Court of Appeals of Alaska.

May 8, 1987.

Rehearing Denied June 1, 1987.

Defendant was indicted for first-degree misconduct involving weapons, for his alleged possession of "gravity knife." The Superior Court, Fourth Judicial District, Fairbanks, Gerald J. Van Hoomissen, J., granted defendant's motion to dismiss indictment on ground that statute was unconstitutionally vague, and State appealed. The Court of Appeals, Coats, J., held that:

Alaska Rep. 732-736 P.2d-13

(1) use of term "gravity knife" within statute prohibiting possession of such weapon was not unconstitutionally vague; (2) statute which makes possession of "gravity knife" in one's home a crime does not violate right to privacy under State Constitution; but (3) remand was required due to trial court's failure to make factual finding concerning whether knife seized from defendant was "gravity knife" within statute's meaning.

Reversed and remanded.

1. Constitutional Law ⇨258(2)

Statute is impermissibly vague and violates due process if it is so indefinite that person of ordinary intelligence would have to guess what conduct it prohibits. U.S. C.A. Const.Amends. 5, 14.

2. Constitutional Law ⇨90(1)

Criminal Law ⇨13.1(1)

In determining whether statute is unconstitutionally vague, reviewing court must determine whether statute provides adequate notice of prohibited conduct, whether statute has potential for arbitrary enforcement, and whether statute infringes on First Amendment right of freedom of expression. U.S.C.A. Const.Amends. 1, 5, 14.

3. Weapons ⇨3

Term "gravity knife," which is included as prohibited weapon under statute making it a felony to possess such weapon, is not unconstitutionally vague; "gravity knife" is commonly understood as knife in which blade opens, falls into place, or is ejected into position by force of gravity or by centrifugal force, and "gravity knife" is included in statute in conjunction with switchblade knife, thus providing ordinary person with notice that "gravity knife" must be similar to switchblade in operating automatically or semiautomatically. AS 11.61.200(e)(1)(D).

See publication Words and Phrases for other judicial constructions and definitions.

4. Constitutional Law §82(7)

Weapons §3

Statute which makes possession of "gravity knife" in one's home a felony does not violate right to privacy under State Constitution; legislature may properly prohibit possession of object which interferes in serious manner with health, safety, rights, and privileges of others, or with public welfare. AS 11.61.200(a)(3); Const. Art. 1, § 22.

5. Criminal Law §1181.5(3)

Trial court's failure to make factual finding as to whether knife seized from defendant was "gravity knife" within meaning of statute making possession of such weapon a felony required remand for further proceedings. AS 11.61.200(a)(3).

Robert D. Bacon, Asst. Atty. Gen., Office of Special Prosecutions and Appeals, Anchorage, and Harold M. Brown, Atty. Gen., Juneau, for the State of Alaska.

William A. Davies, Asst. Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for appellee and appellant Weaver.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

OPINION

COATS, Judge.

A grand jury indicted Mark Weaver for first-degree misconduct involving weapons. AS 11.61.200(a)(3). The indictment charged Weaver with possessing a gravity knife. He moved to dismiss the indictment, contending that the statute was unconstitutionally vague. Superior Court Judge Gerald J. Van Hoomissen granted the motion and the state appeals. We reverse on the issue of the statute's constitutionality, but remand for further proceedings.

[1, 2] A statute is impermissibly vague and violates due process if it is so indefinite that a person of ordinary intelligence would have to guess what conduct it prohibits. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903

(1983); *Williford v. State*, 674 P.2d 1329, 1330 (Alaska 1983). Our courts consider three factors in evaluating a statute's vagueness. First, we examine whether the statute provides adequate notice of the prohibited conduct. Second, we consider the statute's potential for arbitrary enforcement. Third, we determine whether the statute infringes on the first amendment right of freedom of expression. *Summers v. Anchorage*, 589 P.2d 863, 866-67 (Alaska 1979); *Stock v. State*, 526 P.2d 3, 7-9 (Alaska 1974). Weaver has conceded that there are no first amendment considerations at issue here.

Alaska Statute 11.61.200(a)(3) makes it a felony to possess a "prohibited weapon." "Prohibited weapon" is defined in AS 11.61.200(e)(1)(D) to include a "switchblade or gravity knife." Neither "switchblade" nor "gravity knife" is defined in the criminal law statutes.

[3] We find that the term "gravity knife" is not improperly vague. The term has a readily ascertainable and consistent definition. As commonly understood, a gravity knife is one in which the blade opens, falls into place, or is ejected into position by the force of gravity or by centrifugal force. Webster's Third New International Dictionary defines a "gravity knife" as "a switchblade knife in which the blade is sprung by a downward snap of the wrist." *Webster's Third New International Dictionary of the English Language Unabridged*, 993 (1963). Statutes of other states defining the term "gravity knife" are consistent with this straightforward definition. See, e.g., Colo.Rev.Stat. § 18-12-101(1)(e) (1986); N.J.Stat. Ann. § 2C:39-1(h) (West Supp.1986); N.Y. Penal Law § 265.00(5) (McKinney 1980).

Furthermore, in the Alaska Statute on prohibited weapons, the term "gravity knife" is used in conjunction with "switchblade knife." AS 11.61.200(e)(1)(D). The ordinary person is therefore put on notice that a "gravity knife" must be similar to a switchblade in operating automatically or semi-automatically. The pertinent characteristics which a switchblade and a gravity knife have in common are that they are

WAYNE ANTHONY ROSS
POST OFFICE BOX 101522
ANCHORAGE, ALASKA 99510

Rupe Andrews
9416 Long Run Drive
Juneau, AK 99801

Dear Rupe:

I have examined the copy of HB 104 and have the following objections to it:

Page 3, line 29. "(4) manufactures, possesses, transports, sells, or transfers metal knuckles; or" This section makes no provision for collectors of weapons and serious students of weaponry. The mere possession of an inanimate object of no intrinsic evil should not be prohibited. I know a number of weapons collectors who have these items and they should not be subject to criminal penalties simply because of the mere fact of their possession. Likewise, the sale or transfer of these items should not be prohibited between law abiding persons, and especially between collectors. Metal knuckles have not ever been any problem in Alaska and this provision should be deleted from the present and proposed law. If this is not possible then there should be added a provision that says "It is an affirmative defense to this section that the possession, transportation, sale, or transfer of such weapons is for historical or educational purposes."

Page 3, line 30-31. "(5) manufactures, sells, or transfers a switchblade, a gravity knife, or a butterfly knife." Again, I object to this provision. In Alaska, it is often necessary to have a knife available that opens quickly. Fishermen are particularly mindful of this need. Switch blades, gravity knives, and butterfly knives fulfill this need. The law makes no provisions for Alaskans with such a need, and again, it makes no provision for collectors of knives and serious students of weaponry. The mere possession of an inanimate object of no intrinsic evil should not be prohibited. I know a number of fishermen, outdoorsmen, and knife collectors who have these items and they should not be subject to criminal penalties simply because of the mere fact that they sell or transfer these items to other fishermen, outdoorsmen, or knife collectors. Switchblades, gravity knives, and butterfly knives have never been a real problem in Alaska and this provision should be deleted from the present and proposed law. If this is not possible then there should be added a provision that says "It is an affirmative defense to this section that the sale or transfer is to a person who has no criminal record, and intends to use the switchblade, gravity knife, or butterfly knife for lawful purposes in his employment, for lawful recreation, or for historical or educational purposes."

Page 4, line 5. "or a defensive weapon" I fail to see why we

are adding another type of weapon, regularly used by women to protect themselves, to the Concealed Weapons statute. People have the right to protect themselves, and to outlaw the mere possession, by a law-abiding citizen, of a recognized and state defined "defensive weapon" simply makes it that harder for the law-abiding to protect themselves against the criminals who, because they are criminals, won't abide by the law anyway! This law simply further penalizes the good guys and gals. There is no reason for it.

Page 4, line 10-13. "(4) knowingly possesses a firearm within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school, without the permission of the chief administrator of the school or district or the designee of the chief administrative officer; or"

This provision, if enacted at all, should be limited to loaded firearms and only loaded firearms, if any, should be prohibited. Often in Alaska, parents, who are leaving on a hunting trip, drop their kids off at school before leaving for the hunting grounds, or the parents may pick the kid up at school to leave together for a hunt. Such parents, who simply have an unloaded and encased firearm in their car, could be prosecuted under this law. I know that I would often pick my kids up at school, especially after a Saturday school activity, with a firearm in my car. Often we would be planning to leave from the school to go to the range together, or to go fishing or hiking. To require a parent to have to first get permission, which may or not be granted, before picking up his or her own child under such circumstances, is ridiculous.

Page 4, line 14. "(5) possess or transports a switchblade, a gravity knife, or a butterfly knife." See my comments for page 4, lines 30-31.

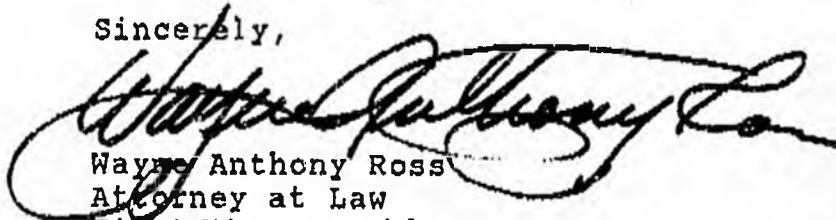
Page 4, line 19-page 5, line 5, singles out semi-automatic firearms as if they are some type of bogeyman, or as if they are some type of firearm more deadly or more evil than others. This emphasis is totally improper. If felons can have firearms, and I don't advocate that they should, a felon can do just as much damage with a pump shotgun or rifle as he can with a semi-automatic. Listing semi-automatics as a different, and perhaps more deadly, type of firearm, is setting a very bad precedent. After all, what makes a Remington Model 740 OK, but a Model 742 a prohibited weapon? There simply is no basis for this provision.

Page 6, lines 3-5. Again, this provision singles out semi-automatic firearms. Please see my comments to page 4, line 19-page 5, line 5.

Please feel free to circulate these comments as you feel necessary. I would be happy to testify telephonically when the

opportunity arises.

Sincerely,



Wayne Anthony Ross
Attorney at Law
First Vice President, National Rifle
Association of America
Chairman, NRA Gun Collectors
Committee
President Emeritus, Alaska Gun
Collectors Association
Director, National Firearms Museum
Fund
Honorary Life Member, Ohio Gun
Collectors Association
Life Member, Dallas Arms Collectors
Member, Alaska State Rifle and Pistol
Association
Member, Alaska Rifle Club
Member, Colt Collectors Association
Member, Great Lakes Weapons
Collectors
Member, Ruger Collectors Association
Member, Smith and Wesson Collectors
Association
Member, Toy Gun Collectors
Association
Member, Toy Gun Purveyors
Member, Wyoming Weapons Collectors

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 104

HB 104 makes various changes to state laws defining defensive weapons prohibiting their possession and use in certain circumstances, and amends criminal laws relating to misconduct involving weapons.

These changes include making it a crime for felons to possess semi-automatic firearms; making it a crime to sell a semi-automatic firearm to a felon; prohibiting felons from living where firearms and prohibited weapons are located during the period that they are banned from possessing these weapons; and adding "butterfly knives" to the list of prohibited knives.

The bill also makes it a crime to possess firearms on school grounds; makes the ban on felons possessing concealable firearms, semi-automatic firearms, and prohibited weapons permanent when the felon's conviction was for a violent crime; otherwise, increasing to ten years the period of time during which felons are banned from possessing these weapons.

The bill also increases the level of offense to a class B felony for felons to possess (for some period of time following conviction) concealable firearms and prohibited weapons; reduces the penalty for selling or possessing metal knuckles, or for selling switchblades and other prohibited knives, from a class C felony to a class A misdemeanor; and reduces the penalty for possessing switchblades and other prohibited knives from a class C felony to a class B misdemeanor.

Because the bill's provisions will serve overall to prevent crime, it is the Department of Law's view that the bill will not cause a fiscal impact for the department.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 104

Revision Date: _____ Department Affected: Corrections
 Title: An act defining defensive weapons BRU:
and prohibiting their possession Component: _____
 Sponsor: Rep. Donley
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director *Tom Sutton* Phone: 465-3376
 Division: Administrative Services Date: 2-10-91
 Approved by Commissioner: *Stephen James*
 Agency: Department of Corrections Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 104

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act defining defensive weapons ..misconduct involving weapons." BRU: Prosecution
 Component: Criminal Justice Litigation
 Sponsor: Representative Donley
 Requestor: Hous. Judiciary COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 11, 1991
 Approved by Commissioner: Richard I. Pegues
 Agency: Department of Law Date: February 11, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 104

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act defining defensive weapons BRU: Trial Courts
and prohibiting their possession... Components: _____
 Sponsor: Donley
 Requestor: Judiciary Committee COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 264-8228
 Division: Alaska Court System Date: 02/08/91

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*
 Agency: Alaska Court System Date: 02/08/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 4, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-13-91

The JUDICIARY Committee considered:

HB 104

HOUSE BILL NO. 104

WEAPONS OFFENSES

"An Act defining defensive weapons and prohibiting their possession and use in certain circumstances; and amending the criminal laws relating to misconduct involving weapons."

RECOMMENDATIONS:

be replaced with CS HB 104 (Jud) [] the same title
[] a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

Use zero fiscal note Pub. Safety; Courts; Corrections; LAW [] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<u>Dave Donley</u>				
<u>Kevin Pat Parnell</u>				
<u>Mike Miller</u>				
<u>Terry Martin</u>				
<u>Mark Handley</u>				
<u>M. J. Gundersen</u>				

Dave Donley
Chairman's Signature

easily concealed and quickly brought to bear. These characteristics are indicative of knives which are used as weapons, rather than tools. Some utility knives are quickly brought to bear, such as a fishing or hunting knife in a sheath, but are not easily concealed. Indeed, it is only when these utility knives are concealed that their possession is unlawful. AS 11.61.220(a)(1).¹ An ordinary pocket knife may be carried concealed upon the person. AS 11.61.220(a)(1). However, an ordinary pocket knife is incapable of being quickly brought to bear.

Finally, we will not generally find a statute vague on the grounds that it is subject to arbitrary or discriminatory enforcement where there is no history of selective or arbitrary prosecution. *Summers v. Anchorage*, 589 P.2d 863, 868 (Alaska 1979); *Levshakoff v. State*, 565 P.2d 504, 507 (Alaska 1977); *Morrow v. State*, 704 P.2d 226, 233 (Alaska App.1985). Weaver has presented no evidence that the statute has a history of being discriminatorily enforced.

[4] Weaver also seems to argue that a statute which makes the possession of a gravity knife in one's home a crime, violates the right to privacy under the Alaska Constitution, article 1, section 22. The legislature may properly prohibit the possession of an object which "interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare." *State v. Erickson*, 574 P.2d 1, 21 (Alaska 1978). "No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely." *Ravin v. State*, 537 P.2d 494, 504 (Alaska 1975). The legislative commentary to AS 11.61.200, discuss-

1. Alaska Statute 11.61.220(a)(1) states: *Misconduct involving weapons in the third degree.* (a) A person commits the crime of misconduct involving weapons in the third degree if the person
 - (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on the person.
2. Weaver also appeals the trial court's denial of his suppression motion which alleged that the

ing the definition of "prohibited weapon," states:

Such weapons have little or no legitimate function, are unnecessary for protection and are not commonly used for commercial or recreational purposes. Substantial risk of harm to others and the furtherance of crime result from private possession of such weapons.

Commentary on the Alaska Revised Criminal Code, Senate Journal Supp. No. 47 at 101, 1978 Senate Journal 1399. The legislature could reasonably conclude that gravity knives have no legitimate purpose and are too dangerous to be casually possessed.

[5] Apparently, Judge Van Hoomissen never made a factual finding concerning whether or not the knife seized from Weaver was a gravity knife within the statute's meaning. We therefore remand for further proceedings.

The superior court's judgment is REVERSED and this case is REMANDED for further proceedings consistent with this opinion.²



William E. CROUSE, Appellant,

v.

STATE of Alaska, Appellee.

No. A-1800.

Court of Appeals of Alaska.

May 8, 1987.

Following first-degree burglary defendant's violation of probation, under ten-

search, during which, the knife was seized, was illegal. Since the trial court dismissed the charges resulting from the search, the only "final judgment" in the case favored Weaver and we have no jurisdiction to hear this issue. AS 22.07.020; Alaska R.App. P. 202(b). Should the charges be reinstated and result in a conviction, Weaver may then appeal the denial of his suppression motion.

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