

HB

104

**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

Bill Number: H 104

Abbreviated Title: Misconduct w Weapons -

Sponsor: Donley; Ulmer, Barner, etc. Original Received: May 1, 1991

Written Request to Schedule Rcv'd: May 2, 91 From: Donley

Sponser's Statement Rcv'd: _____ From: _____

Sectional Analysis Rqst'd: _____ From: _____

Sectional Analysis Received: _____

Fiscal Note (Original)

Rqst'd Of: _____ Rcv'd From: Pub Sal Date: May 1, 1991

Rqst'd Of: _____ Rcv'd From: Court Date: with Bill

Rqst'd Of: _____ Rcv'd From: Correction Date: with Bill

Fiscal Note (C.S.) Law with Bill

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Five Day Notice Given: By House - Notice of Hearings Given: _____

Committees of Referral: First: Jud Second: _____ Third: _____

LAA Contact: _____ To Senate Secretary: _____

COMMITTEE ACTION

DATE:

May 19, 1991

Senate CS adopted - unresolvable adopted
Pass on final Res -
Sent to Darius for "final"

PERSONS TO BE NOTIFIED OF HEARING

- | | |
|------------|-----------|
| 1. Sponsor | 6. _____ |
| 2. Agency | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

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ALASKA LANDINGS • BENIZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
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CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

M E M O R A N D U M

TO: Senator Rick Halford, Judiciary Chair

FROM: Representative Dave Donley, Judiciary Chair D

DATE: May 2, 1991

RE: Request to hear CSHB 104 (Judiciary) am

I respectfully request that HB 104 be scheduled for a Senate Judiciary hearing. HB 104 places strict limits on convicted felons having firearms, and makes it illegal for kids under the age of 21 to have guns on school property without the permission of the school principal. The bill also clarifies that it is legal to carry mace or small stun guns to defend yourself against muggers.

Substantial changes were made to HB 104 in the House Judiciary Committee in order to accommodate concerns raised by the Departments of Public Safety and Law and the National Rifle Association. In its present form, the bill is supported by all interested parties.

Current Alaska law on allowing felons to possess firearms is much more lenient than other states. Also it is unclear in existing law whether it is legal to carry concealed defensive weapons such as mace and small stun guns for personal protection. Since Alaska has such a high rate of violent crime, including one of the highest rape rates in the country, I believe our laws must be amended to allow law-abiding citizens to protect themselves and to keep weapons that are easily abused away from felons to the greatest extent possible.

In addition to the major amendments described above, HB 104 makes several other minor amendments to our weapons laws that correct problems brought to my attention. A sectional analysis describing the amendments in more detail is attached to this memorandum.

Thank you very much for your consideration of this request.

DD:lc



SECTIONAL ANALYSIS - CSHB 104 (JUDICIARY) am

Section 1. Clarifies that first degree robbery is committed when a defensive weapon (defined in bill section 10 as certain electric stun guns or devices designed to dispense substances such as mace) is used or attempted to be used.

Section 2. Clarifies that first degree escape is committed when a defensive weapon is used or attempted to be used.

Section 3. Clarifies that it is illegal to bring defensive weapons into correctional institutions.

Section 4. (1) Makes it illegal for convicted felons to have a removable rifle magazine capable of containing more than five cartridges; (2) replaces undefined term "drug" with defined term "controlled substance"; (3) clarifies definition of "under the influence" for purposes of the weapons statute; (4) clarifies that it is illegal to possess defensive weapons during a violation of a domestic violence restraining order; (5) makes it illegal for a convicted felon to knowingly live in a dwelling in which there is a concealable firearm or high volume rifle magazine without authorization from a court or the head of a local police agency.

Section 5. Extends the period of time during which most felons are prohibited from having concealable firearms or high volume rifle magazines from five years to ten years, and permanently prohibits felons convicted of committing a violent crime from having concealable firearms or high volume rifle magazines.

Section 6. Removes metal knuckles, switchblades, and gravity knives from the list of prohibited weapons (these weapons will remain prohibited under bill sections 7 and 8).

Section 7. (1) Prohibits a person from possessing firearms in the interior of a vehicle while intoxicated; (2) reduces penalty for possessing or selling metal knuckles from a C felony to an A misdemeanor; (3) reduces penalty for selling switchblades and gravity knives from a C felony to an A misdemeanor.

Section 8. (1) Clarifies that it is not illegal to carry a defensive weapon concealed on the person; (2) prohibits kids under the age of 21 from having guns on school property without permission from the school principal but allows adults to have guns on school property in the trunk of a car, in a closed container, or with the permission of the principal; (3) reduces the penalty for possessing switchblades and gravity knives from a C felony to a B misdemeanor.

Section 9. Makes a technical change to conform with section 8.

Section 10. Defines "defensive weapon".

Section 11. Repeals statute to conform to section 4 amendment.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

*bill requested
9/14/90*

POUCHY STATE CAPITOL
JURFALU ALASKA 99501
907 465 4800

MEMORANDUM

September 11, 1990

SUBJECT: Is carrying defensive weapons forbidden by
the state concealed weapons statute? (Work
order 7-0045A)

TO: Representative Dave Donley

FROM: Jack Chenoweth
Legislative Counsel

You have asked whether a person's carrying a so-called de-
fensive weapon--a chemical agent such as tear gas or mace,
or a stun gun or similar device--is prohibited by the
state's concealed weapons statute.

I can offer no definitive conclusion, only a review of the
following elements that appear to be pertinent to a deter-
mination. The legislature may wish to clarify the apparent
ambiguity by statute.

*

What is commonly referred to as the state's "concealed
weapons statute" is the offense of misconduct involving
weapons in the third degree, a class B misdemeanor.
AS 11.61.220(a) provides:

A person commits the crime of misconduct in-
volving 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;

Thus, a person's concealed possession of these items would
be an offense only if the items may be regarded as "deadly
weapons."

The Criminal Code defines "deadly weapon" as

. . . any firearm, or anything designed for and capable of causing death or serious physical injury

AS 11.81.900(a)(12), and "serious physical injury" is defined to include

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that lawfully terminates a pregnancy;

AS 11.81.900(a)(50).

A stun gun is not a firearm. The statutory definition of "firearm" includes a requirement that the weapon be "designed for discharging a shot capable of causing death or serious physical injury," AS 11.81.900(a)(21), and it is clear that a stun gun is not so designed. See Kinnish v. State, 777 P.2d 1179 (Alaska App. 1989).

Thus, a chemical agent or a stun gun qualifies as a deadly weapon only if one can conclude that each was "designed for and capable of" causing the victim's death or causing serious physical injury to the victim.

Depending on its nature, application, or use, a chemical agent or a stun gun is capable of causing or contributing to protracted impairment of health or protracted loss or impairment of the function of a body member. Thus, when used in a manner likely to produce death or great bodily harm, the chemical agent or the device may be classified as a deadly weapon.

There is no Alaska decision on the subject that provides guidance. As a general rule, however, if the crime charged is not for the commission of an offense by the use of a deadly weapon, but the essential element of the offense consists in the defendant's carrying or having possession of the weapon, it is for the court to determine, as a matter of

Representative Dave Donley
Page 3
September 11, 1990

law, whether the instrument is or is not a deadly weapon. Barboursville ex rel. Bates v. Taylor, 174 S.E. 485 (W.Va. 1934), 92 A.L.R. 1093. Thus, if the crime to be charged is concealment under AS 11.61.220(a), misconduct involving weapons in the third degree, the court--not a jury--will ascertain whether the chemical agent or instrument is to be classified as a weapon. To the extent the court finds the statutes ambiguous, presumably, the court would apply the rule of statutory construction that applies a narrow reading and construction that favors the defendant against the state. See Dailey v. State, 675 P.2d 657 (Alaska App. 1984).

You should understand that concealed possession of one or more of these items may be safeguarded by the affirmative defense provided by AS 11.61.220(b):

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

(2) actually engaged in . . . lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

If mace, tear gas, or a stun gun are determined to be a "deadly weapon," then each is, of course, at the same time a "weapon." Arguably, depending upon the context of the weapon's use, a defendant could successfully contend that carrying of the weapon while engaged in lawful outdoor activity was reasonably necessary for personal protection. Surely, for example, the use of mace by a woman walking on public streets at late hours would fall within the coverage of activity protected by the affirmative defense. And, while it is not common for pedestrians to carry tear gas or stun guns as protection in like situations, it is not unreasonable to expect that, under certain circumstances, a similar argument may be presented that justifies a defendant's possession of either or both of them.

The statute cited, misconduct involving a weapon in the third degree, considers only a weapon that is concealed. The statute does not address the open possession of mace, tear gas, or a stun gun.

JBC:lrb
L11/055

BILL NO: CSHB 104(JUD)

DATE: 3/26/91

TITLE: Relating to Misconduct
Involving Weapons

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY

CSHB 104(JUD) makes numerous changes in Alaska's firearms laws. The Department of Public Safety supports this bill, but offers the following comment.

Section 4 of the bill makes it a class "C" felony offense for a convicted felon to possess "a removable rifle magazine capable of containing more than five cartridges". In an earlier draft of this bill, this section prohibited a felon from possessing "a semi-automatic firearm". The Department of Public Safety believes it makes more sense to prohibit the possession by felons of such dangerous firearms, rather than to prohibit possession of a component piece of the firearm. Under the present draft, possession of an empty rifle magazine by a felon would be a class C felony. This seems anomalous, especially as the mere possession of devices such as metal knuckles, switchblades, and gravity knives is being decreased from a class C felony to a class A misdemeanor in this bill. The Department believes this bill would be strengthened considerably by the substitution of "or a semi-automatic firearm" for the new language shown at page 2, lines 14 and 18 and at page 3, lines 11 and 12. As stated above, the Department of Public Safety supports the other aspects of CSHB 104(JUD).



Richard L. Burton
Commissioner



ALASKA OUTDOOR COUNCIL, INC.

Oliver E. (Bud) Burris, President
2801 Talkeetna, Fairbanks AK 99709
(907) 474-0437, FAX (907) 474-0437

Senator Rick Halford
Alaska State Legislature
P.O. Box V Juneau AK 99811

May 13, 1991

Dear Senator Halford:

As the first session of the Seventeenth Legislature draws to a close I want to thank you for your advise and assistance on the many issues during this tumultuous year of constitutional amendment proposals, campaigns, and legislation. I was particularly pleased to express to you the Alaska Outdoor Council's appreciation with our "legislator of the Year" award.

With regard to this year's legislation we are most interested in seeing SB 38 pass the Legislature. It appears that in order to pass SB 38 in the House it will be important for HB 104 to progress. We support HB 104 also and ask that you please schedule its hearing in the Senate Judiciary Committee. Working together I believe we can finally see an anti-hunter harassment law, and possibly pass the weapons bill on which our members have done considerable work.

Thanks again for all your work on behalf of Alaska's Outdoor users.

Sincerely,

Oliver E. (Bud) Burris

5/13 Keep + Bear Arms



NATIONAL RIFLE ASSOCIATION OF AMERICA
INCORPORATED 1871

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RUPE ANDREWS
FIELD REPRESENTATIVE
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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 CSHB-104. I have appreciated the close working relationship with your committee and staff in the markup and committee discussions of CSHB-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

PHONE MESSAGE	TO	Rick	DATE	5/14	TIME	9	AM
	FROM		AREA CODE				PM
	OF		NO.	403-3830			
			EXT.				
	M	Dick Bishop would really like to see HB104 (Weapons Offenses - Donkey) scheduled in Judiciary Comm.					
	E						
	S						
	S	SIGNED					
	A	PHONED	<input type="checkbox"/>	CALL BACK	<input type="checkbox"/>	RETURNED CALL	<input type="checkbox"/>
	G	WANTS TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>	WAS IN	<input type="checkbox"/>
	E	URGENT	<input type="checkbox"/>				