SB 189

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 – Fax
Senator_Charlie_Huggins@legis.state.ak.us

State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878
www.akrepublicans.org/huggins/

Charlie Huggins
Senator

SB 189 Sponsor Statement

This bill provides that felons who have received a pardon or who have received a set aside after a suspended imposition of sentence (SIS) will be allowed to possess concealed firearms without restrictions.

There are many citizens who have faltered in the past, paid their debt to society, turned their lives around and become valuable contributing members of society. We acknowledge their rehabilitation and welcome them back to society; sometimes, in the case of felons, with only partially restored civil rights. A select, exemplary, few come to the attention of presidents and governors, pursue and endure the thorough, lengthy and arduous clemency process and receive a pardon. Others, due to youthful indiscretions or other mitigating factors are deemed by the court to be worthy of an SIS and receive a set aside. It is those few who have proven worthy of a pardon or SIS to whom this legislation is directed. By passage of SB 189 those individuals will have their right to bear arms fully restored.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB189-DOC-OC-04-13-09
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Identifier (file name): SB189-DOC-OC-04-13-09
Dept. Affected: DOC
Title "Act relating to misconduct involving weapons in the third degree"
RDU Adminstration & Support
Component Office of the Commissioner
Sponsor Senator Huggins, Stedman
Requester Governor
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

Passage of this legislation will have no financial impact to the Department of Corrections.

Prepared by: Leslie Houston, Director — Phone (907) 465-3339
Division Administration and Support — Date/Time 4/13/2009 15:03:00 PM
Approved by: Dwayne Peeples, Deputy Commissioner — Date 4/13/2009
Department of Corrections

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Standards for Consideration of Clemency Petitions

United States Attorney's Manual Standards for Consideration of Clemency Petitions

Section 1-2.110 Office of the Pardon Attorney

The Pardon Attorney assists the President in the exercise of his power under Article II, Section 2, clause 1 of the Constitution (the Pardon Clause). *See* Executive Order dated June 16, 1893 (transferring clemency petition processing and advisory functions to the Justice Department), the Rules Governing the Processing of Petitions for Executive Clemency (codified in 28 C.F.R. §§ 1.1 *et seq.*), and 28 C.F.R. §§ 0.35 and 0.36 (relating to the authority of the Pardon Attorney). The Pardon Attorney, under the direction of the Deputy Attorney General, receives and reviews all petitions for executive clemency (which includes pardon after completion of sentence, commutation of sentence, remission of fine and reprieve), initiates and directs the necessary investigations, and prepares a report and recommendation for submission to the President in every case. In addition, the Office of the Pardon Attorney acts as a liaison with the public during the pendency of a clemency petition, responding to correspondence and answering inquiries about clemency cases and issues. The following sets forth guidance on clemency matters.

Section 1-2.111 Role of the United States Attorney in Clemency Matters

The Pardon Attorney routinely requests the United States Attorney in the district of conviction to provide comments and recommendations on clemency cases that appear to have some merit, as well as on cases that raise issues of fact about which the United States Attorney may be in a position to provide information. Occasionally, the United States Attorney in the district in which a petitioner currently resides also may be contacted. In addition, in cases in which the petitioner seeks clemency based on cooperation with the government, the Pardon Attorney may solicit the views of the United States Attorney in the district(s) in which the petitioner cooperated, if different from the district of conviction. While the decision to grant clemency generally is driven by considerations that differ from those that dictate the decision to prosecute, the United States Attorney's prosecutive perspective lends valuable insights to the clemency process.

The views of the United States Attorney are given considerable weight in determining what recommendations the Department should make to the President. For this reason, and in order to ensure

consistency, it is important that each request sent to the district receive the personal attention of the United States Attorney. Each petition is presented for action to the President with a report and recommendation from the Department, and the recommendation by the United States Attorney is included in this report.

The United States Attorney can contribute significantly to the clemency process by providing factual information and perspectives about the offense of conviction that may not be reflected in the presentence or background investigation reports or other sources, e.g., the extent of the petitioner's wrongdoing and the attendant circumstances, the amount of money involved or losses sustained, the petitioner's involvement in other criminal activity, the petitioner's reputation in the community and, when appropriate, the victim impact of the petitioner's crime. On occasion, the Pardon Attorney may request information from prosecution records that may not be readily available from other sources.

As a general matter, in clemency cases the correctness of the underlying conviction is assumed, and the question of guilt or innocence is not generally at issue. However, if a petitioner refuses to accept guilt, minimizes culpability, or raises a claim of innocence or miscarriage of justice, the United States Attorney should address these issues.

In cases involving pardon after completion of sentence, the United States Attorney is expected to comment on the petitioner's post-conviction rehabilitation, particularly any actions that may evidence a desire to atone for the offense, in light of the standards generally applicable in pardon cases as discussed in the following section. Similarly, in commutation cases, comments may be sought on developments after sentencing that are relevant to the merits of a petitioner's request for mercy.

In pardon cases, the Pardon Attorney will forward to the United States Attorney copies of the pardon petition and relevant investigative reports. These records should be returned to the Pardon Attorney along with the response. In cases involving requests for other forms of executive clemency (i.e., commutation of sentence or remission of fine), copies of the clemency petition and such related records as may be useful (e.g., presentence report, judgment of conviction, prison progress reports, and completed statement of debtor forms) will be provided.

The Pardon Attorney also routinely requests the United States Attorney to solicit the views and recommendation of the sentencing judge. If the sentencing judge is retired, deceased, or otherwise unavailable for comment, the United States Attorney's report should so advise. In the event the United States Attorney does not wish to contact the sentencing judge, the Pardon Attorney should be advised accordingly so that the judge's views may be solicited directly. Absent an express request for confidentiality, the Pardon Attorney may share the comments of the United States Attorney with the sentencing judge or other concerned officials whose views are solicited.

The United States Attorney may support, oppose or take

no position on a pardon request. In this regard, it is helpful to have a clear expression of the office's position. The Pardon Attorney generally asks for a response within 30 days. If an unusual delay is anticipated, the Pardon Attorney should be advised when a response may be expected. If desired, the official views of the United States Attorney may be supplemented by separate reports from present or former officials involved in the prosecution of the case. The United States Attorney may of course submit a recommendation for or against clemency even if the Pardon Attorney has not yet solicited comments from the district. The Pardon Attorney informs the United States Attorney of the final disposition of any clemency application on which he or she has commented.

Section 1-2.112 Standards for Considering Pardon Petitions

In general, a pardon is granted on the basis of the petitioner's demonstrated good conduct for a substantial period of time after conviction and service of sentence. The Department's regulations require a petitioner to wait a period of at least five years after conviction or release from confinement (whichever is later) before filing a pardon application (28 C.F.R. § 1.2). In determining whether a particular petitioner should be recommended for a pardon, the following are the principal factors taken into account.

1. Post-conviction conduct, character, and reputation.

An individual's demonstrated ability to lead a responsible and productive life for a significant period after conviction or release from confinement is strong evidence of rehabilitation and worthiness for pardon. The background investigation customarily conducted by the FBI in pardon cases focuses on the petitioner's financial and employment stability, responsibility toward family, reputation in the community, participation in community service, charitable or other meritorious activities and, if applicable, military record. In assessing post-conviction accomplishments, each petitioner's life circumstances are considered in their totality: it may not be appropriate or realistic to expect "extraordinary" post-conviction achievements from individuals who are less fortunately situated in terms of cultural, educational, or economic background.

2. Seriousness and relative recentness of the offense.

When an offense is very serious (e.g., a violent crime, major drug trafficking, breach of public trust, or white collar fraud involving substantial sums of money), a suitable length of time should have elapsed in order to avoid denigrating the seriousness of the offense or undermining the deterrent effect of the conviction. In the case of a prominent individual or notorious crime, the likely effect of a pardon on law enforcement interests or upon the general public should be taken into account. Victim impact may also be a relevant consideration. When an offense is very old and relatively minor, the equities may weigh more heavily in favor of forgiveness, provided the petitioner is otherwise a suitable candidate for pardon.

3. Acceptance of responsibility, remorse, and atonement.

The extent to which a petitioner has accepted responsibility for his or her criminal conduct and made restitution to its victims are important considerations. A petitioner should be genuinely desirous of forgiveness rather than vindication. While the absence of expressions of remorse should not preclude favorable consideration, a petitioner's attempt to minimize or rationalize culpability does not advance the case for pardon. In this regard, statements made in mitigation (e.g., "everybody was doing it," or "I didn't realize it was illegal") should be judged in context. Persons seeking a pardon on grounds of innocence or miscarriage of justice bear a formidable burden of persuasion.

4. Need for relief.

The purpose for which pardon is sought may influence disposition of the petition. A felony conviction may result in a wide variety of legal disabilities under state or federal law, some of which can provide persuasive grounds for recommending a pardon. For example, a specific employment-related need for pardon, such as removal of a bar to licensure or bonding, may make an otherwise marginal case sufficiently compelling to warrant a grant in aid of the individual's continuing rehabilitation. On the other hand, the absence of a specific need should not be held against an otherwise deserving applicant, who may understandably be motivated solely by a strong personal desire for a sign of forgiveness.

5. Official recommendations and reports.

The comments and recommendations of concerned and knowledgeable officials, particularly the United States Attorney whose office prosecuted the case and the sentencing judge, are carefully considered. The likely impact of favorable action in the district or nationally, particularly on current law enforcement priorities, will always be relevant to the President's decision. Apart from their significance to the individuals who seek them, pardons can play an important part in defining and furthering the rehabilitative goals of the criminal justice system.

Section 1-2.113 Standards for Considering Commutation Petitions

A commutation of sentence reduces the period of incarceration; it does not imply forgiveness of the underlying offense, but simply remits a portion of the punishment. It has no effect upon the underlying conviction and does not necessarily reflect upon the fairness of the sentence originally imposed. Requests for commutation generally are not accepted unless and until a person has begun serving that sentence. Nor are commutation requests generally accepted from persons who are presently challenging their convictions or sentences through appeal or other court proceeding.

The President may commute a sentence to time served or

he may reduce a sentence, either merely for the purpose of advancing an inmate's parole eligibility or to achieve the inmate's release after a specified period of time. Commutation may be granted upon conditions similar to those imposed pursuant to parole or supervised release or, in the case of an alien, upon condition of deportation.

Generally, commutation of sentence is an extraordinary remedy that is rarely granted. Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts
that has not been adequately rewarded by other official action. A combination of these and/or other equitable factors may also provide a basis for recommending commutation in the context of a particular case.

The amount of time already served and the availability of other remedies (such as parole) are taken into account in deciding whether to recommend clemency. The possibility that the Department itself could accomplish the same result by petitioning the sentencing court, through a motion to reward substantial assistance under Rule 35 of the Federal Rules of Criminal Procedure, a motion for modification or remission of fine under 18 U.S.C. § 3573, or a request for compassionate relief under 18 U.S.C. § 3582(c)(1), will also bear on the decision whether to recommend Presidential intervention in the form of clemency. When a commutation request is based on the serious illness of the petitioner, transmission of the United States Attorney's response by facsimile in advance of mailing the original is always appreciated.

When a petitioner seeks remission of fine or restitution, the ability to pay and any good faith efforts to discharge the obligation are important considerations. Petitioners for remission also should demonstrate satisfactory post-conviction conduct.

On January 21, 1977, the President by Proclamation 4483 granted pardon to persons who committed non-violent violations of the Selective Service Act between August 4, 1964 and March 28, 1973 and who were not Selective Service employees. Although a person who comes within the described class was immediately pardoned by the proclamation, the Pardon Attorney issues certificates of pardon to those within the class who were actually convicted of a draft violation and who make written application to the Department on official forms. When these applications are received by the Pardon Attorney, they are forwarded to the United States Attorney for the district in which the applicant was convicted to verify the facts of the case. The verification should be returned to the Pardon Attorney promptly.

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Pardon Information and Instructions

Information and Instructions on Pardons
Please read carefully before completing the pardon application

1. Submit the petition to the Office of the Pardon Attorney

All petitions, except petitions relating to military offenses (see paragraph 6 below), should be forwarded to the Office of the Pardon Attorney, Department of Justice. The completed pardon petition must be entirely legible; therefore, please type or print in ink. The form must be completed fully and accurately in order to be considered. You may attach to the petition additional pages and documents that amplify or clarify your answer to any question.

2. Federal convictions only

Under the Constitution, only federal criminal convictions, such as those obtained in the United States District Courts, may be pardoned by the President. In addition, the President's pardon power extends to convictions obtained in the Superior Court of the District of Columbia and military court-martial proceedings. However, the President cannot pardon a state criminal offense. Accordingly, if you are seeking clemency for a state criminal conviction, you should not complete and submit this petition. Instead, you should contact the Governor or other appropriate authorities of the state where you reside or where the conviction occurred (such as the state board of pardons and paroles) to determine whether any relief is available to you under state law. If you have a federal conviction, information about the conviction may be obtained from the clerk of the federal court where you were convicted.

3. Five-year waiting period required

Under the Department's rules governing petitions for executive clemency, 28 C.F.R. §§ 1.1 *et seq.*, a minimum waiting period of five years after completion of sentence is required before anyone convicted of a federal offense becomes eligible to apply for a presidential pardon. The waiting period, which is designed to afford the petitioner a reasonable period of time in which to demonstrate an ability to lead a responsible, productive and law-abiding life, begins on the date of the petitioner's release from confinement. Alternatively, if the conviction resulted in a sentence other than a term of imprisonment, such as probation or a fine, the waiting period begins on the date of sentencing. In addition, the petitioner should have satisfied the penalty imposed, including all probation, parole, or supervised release. Moreover, the waiting period begins upon release from confinement for your

most recent c onviction, whether or not this is the offense for which pardon is sought. You may make a written request for a waiver of this requirement. However, waiver of any portion of the waiting period is rarely granted and then only in the most exceptional circumstances. In order to request a waiver, you must complete the pardon application form and submit it with a cover letter explaining why you believe the waiting period should be waived in your case.

4. Reason for seeking pardon

In answering question 20, you should state the specific purpose for which you are seeking pardon and, if applicable, attach any relevant documentary evidence that indicates how a pardon will help you accomplish that purpose (such as citations to applicable provisions of state constitutions, statutes, or regulations, or copies of letters from appropriate officials of administrative agencies, professional associations, licensing authorities, etc.). In addition, you should bear in mind that a presidential pardon is ordinarily a sign of forgiveness and is granted in recognition of the applicant's acceptance of responsibility for the crime and established good conduct for a significant period of time after conviction or release from confinement. A pardon is not a sign of vindication and does not connote or establish innocence. For that reason, when considering the merits of a pardon petition, pardon officials take into account the petitioner's acceptance of responsibility, remorse, and atonement for the offense.

5. Multiple federal convictions

If you have more than one federal conviction, the most recent conviction should be shown in response to question 2 of the petition and the form completed as to that conviction. For all other federal convictions, including convictions by military courts-martial, the information requested in questions 2 through 6 of the petition should be provided on an attachment. Any federal charges not resulting in conviction should be reported in the space provided for prior and subsequent criminal record (question 7).

6. Pardon of a military offense

If you are requesting pardon of a court-martial conviction only, you should submit your completed petition directly to the Secretary of the military department that had original jurisdiction in your case, completing questions 2 through 6 and question 15 of the petition form to show all pertinent information concerning your court-martial trial and conviction. The addresses for submitting a request for a pardon of a court-martial conviction are as follows:

Secretary of the Army
Department of the Army
Pentagon
Washington, DC 20310

Secretary of the Navy
Department of the Navy
Pentagon

Washington, DC 20350

Secretary of the Air Force
Department of the Air Force
Pentagon
Washington, DC 20330

Pardon of a military offense will not change the character of a military discharge. An upgrade or other change to a military discharge may only be accomplished by action of the appropriate military authorities. To apply for a review of a military discharge, you should write to the relevant military branch, at the address listed below:

Army Review Boards Agency
1901 South Bell Street
Arlington, Virginia 22202-4508

Secretary of the Navy
Naval Council of Personnel Records
702 Kennon Street, SE
Suite 309
Washington Navy Yard, DC 20374-5023

Air Force Review Boards Agency
SAS/MRBR
550C Street West
Suite 40
Randolph Air Force Base, Texas 78150-4742

7. Additional arrest record

In response to question 7, you must disclose any additional arrest or charge by any civilian or military law enforcement authority, including any federal, state, local, or foreign authority, whether it occurred before or after the offense for which you are seeking pardon. Your answer should list every violation, including traffic violations that resulted in an arrest or criminal charge, such as driving under the influence. Your failure to disclose any such arrest, whether or not it resulted in conviction, may be construed as a falsification of the petition.

8. Credit status and civil lawsuits

In response to question 14, you must list all delinquent credit obligations, whether or not you dispute them. You must also list all civil lawsuits in which you were named as a party, whether as plaintiff or defendant, including bankruptcy proceedings. You must also list all unpaid tax obligations, whether federal, state, or local. You may submit explanatory material in connection with any of these matters (such as an agreed method of payment for indebtedness).

9. Character references

At least three character affidavits must accompany the petition. If you submit more than three, you should designate the three persons whom you consider to be primary references. The affidavit forms provided are preferred. However, letters of recommendation may be

substituted if they contain the full name, address, and telephone number of the reference, indicate a knowledge of the offense for which you seek pardon, and bear a notarized signature. Persons related to you by blood or marriage cannot be used as primary character references.

10. Effect of a pardon

While a presidential pardon will restore various rights lost as a result of the pardoned offense and should lessen to some extent the stigma arising from a conviction, it will not erase or expunge the record of your conviction. Therefore, even if you are granted a pardon, you must still disclose your conviction on any form where such information is required, although you may also disclose the fact that you received a pardon. In addition, most civil disabilities attendant upon a federal felony conviction, such as loss of the right to vote and hold state public office, are imposed by state rather than federal law, and also may be removed by state action. Because the federal pardon process is exacting and may be more time-consuming than analogous state procedures, you may wish to consult with the appropriate authorities in the state of your residence regarding the procedures for restoring your state civil rights.

11. Scope of investigation

Pardon officials conduct a very thorough review in determining a petitioner's worthiness for relief. Accordingly, you should be prepared for a detailed inquiry into your personal background and current activities. Among the factors entering into this determination are the nature, seriousness and recentness of the offense, your overall criminal record, any specific hardship you may be suffering because of the conviction, and the nature and extent of your post-conviction involvement in community service, or charitable or other meritorious activities. We encourage you to submit information concerning your community contributions.

12. Exclusive Presidential authority

The power to grant pardons is vested in the President alone. No hearing is held on the pardon application by either the Department of Justice or the White House. You will be notified when a final decision is made on your petition, and there is no appeal from the President's decision to deny a clemency request. The Office of the Pardon Attorney does not disclose information regarding the nature or results of any investigation that may have been undertaken in a particular case, or the exact point in the clemency process at which a particular petition is pending at a given time. As a matter of well-established policy, the specific reasons for the President's decision to grant or deny a petition are generally not disclosed by either the White House or the Department of Justice. In addition, documents reflecting deliberative communications pertaining to presidential decision-making, such as the Department's recommendation to the President in a clemency matter, are confidential and not available under the Freedom of Information Act. If your petition is denied, you may submit a new petition for consideration two years from the date of denial.

IV. LEGAL EFFECTS OF A PARDON IN ALASKA

A. Rights

One of the primary misconceptions about pardons in Alaska is that a pardon is the only manner by which one may have one's rights restored. In some states a pardon is the only manner by which a convicted felon may have his or her civil rights restored. However, in Alaska some rights are automatically restored upon unconditional discharge, which is the completion of one's sentence, including any period of probation, discretionary parole, or mandatory parole.

1. Right to Serve on a Jury

A person is disqualified from serving as a juror if the person has been convicted of a felony for which the person has not been unconditionally discharged. *AS 09.20.037(1)*

Thus, in Alaska, a pardon is not necessary to restore one's eligibility to serve on a jury or to vote. The right to vote and the right to serve on a jury are automatically restored to felons upon unconditional discharge of the sentence.

2. Voting Rights

Any person convicted of a felony involving moral turpitude under federal or state law may not vote in a federal, state or municipal election from the date of the conviction through the date of unconditional discharge. *AS 15.05.030*

Upon presenting proof that the person is unconditionally discharged from custody the person may register to vote [*AS 15.07.135*]. If you wish to participate in an election in Alaska after unconditional discharge of your sentence, contact your voting district's regional officer or contact:

State of Alaska
Division of Elections
P.O. Box 110017
Juneau, AK 99811-0017

B. The Right to Own and Possess Firearms

There is a very complex mix of **state** and **federal** law relating to the issue of firearm ownership and possession. Multiple state and federal statutes relate to this issue, and they are subject to frequent change by state and federal legislation. Both the federal and Alaska statutes are likely applicable to an applicant for executive clemency relating to these issues. These laws do vary with allowances and applicability.

As relates to this issue --- and any resolutions relating to firearm ownership and possession forth-coming from executive clemency should it be granted --- are not and will not be addressed by the Parole Board staff or the Office of the Governor in conduct of executive clemency investigations.

Should gun ownership or possession be of concern or critical to your anticipated relief by the granting of a pardon, you must explore and resolve any and all legal complexities (state and federal) through your own personal initiative and research. Due to the complexity of the issue, you should anticipate that this may well necessitate the retention of legal services.

No promise, assurance, or indication of expectation on the issue of gun ownership or possession will be made or implied through the processing and potential granting of executive clemency.

C. Effect Upon the Judgment and Upon Sentencing for Subsequent Offenses

Although many states take a different view, unless otherwise specified in the document granting a pardon in Alaska, a pardon sets aside the conviction. Thus, if a person who has received a pardon is later convicted of another offense, the earlier offense for which a pardon was received may not be considered as a prior conviction at sentencing. However, the facts giving rise to that conviction may be presented to the sentencing court.

A pardon does not eliminate or erase the conviction. The records of conviction continue to exist in both court and law enforcement files. The pardon is included in those files, and the purposes to which those files can be used are limited. In this sense then, to set aside the conviction means only that the individual is considered under the law not to have been previously convicted.

D. Occupational Licensing

Many occupations within the State of Alaska require special licenses which are issued by various licensing boards. Such occupations include barbering, welding, dentistry, law, real estate sales, nursing and guiding. Most of these occupational licensing laws contain provisions requiring that no person may be licensed unless they are of "good moral character." A few, such as the standards for becoming licensed as a guide, require a demonstration that the applicant "has not been convicted of a crime involving moral turpitude." Still others prevent licensing where an applicant has been convicted of a felony.

For example, a regional school board member who is convicted of a felony involving moral turpitude or an offense involving a violation of oath of office while serving as a school board member may not continue to serve. *AS 14.08.045*

A judge shall be removed from office upon final conviction of a "crime punishable as a felony under the state or federal law." *AS 22.30.070(b)*

A professional or occupational license may be denied, suspended or revoked because of a felony conviction.

Examples are:	Insurance Agent	AS 21.27.410(a)(7)
	Accountant	AS 08.04.450(5) & (6)
	Nurse	AS 08.68.270(2)
	Real Estate Broker	AS 08.88.171(a)

As discussed above, unless otherwise specified in the document granting a pardon, a pardon in Alaska sets aside the conviction. Therefore, if there is a requirement that the license applicant has not been convicted of a felony, the pardon would permit licensing. However, if the licensing standard is good moral character, the pardon does not erase the moral guilt associated with the commission of a criminal offense and the fact giving rise to that conviction may be considered in determining whether that person is of "good moral character."

E. Summary of Legal Effects of a Pardon

In summary, the primary legal effect of a pardon is that it sets aside a conviction for a crime committed under the laws of the State of Alaska or the Territory of Alaska. This serves to relieve the person to whom it is granted from all further punishment and other legal consequences imposed by reason of the conviction.

Finally, a conviction for which a pardon has been granted may not be considered at sentencing for the commission of a later offense, nor by any licensing board which issues licenses to practice certain occupations. However, the facts giving rise to that conviction may be considered by both a sentencing court and occupational licensing boards.

V. THE APPLICATION PROCESS

1. ELIGIBILITY DETERMINATION
2. APPLICATION COMPLETION AND SUBMISSION
3. EXECUTIVE CLEMENCY ADVISORY COMMITTEE

An applicant begins the process by first completing and submitting an "Eligibility Determination" form to the Alaska Board of Parole Office (ATTN: Clemency Determination). Once eligibility is positively determined, an Application Form will then be provided to the potential applicant. Requests for Eligibility Determination forms should be submitted to:

Alaska Board of Parole
ATTN: Clemency Determination
550 West 7th Ave., Suite # 601
Anchorage, AK 99501

If an individual is determined to be eligible for executive clemency consideration, and once an application is provided to the applicant and received back in the Parole Board office: the application is investigated by staff of the Board of Parole and a summary is prepared and submitted to the Governor's Executive Clemency Advisory Committee (ECAC). Investigation and review of a clemency application can often take as long as one year.

The Executive Clemency Advisory Committee has historically been comprised of three persons: the Lieutenant Governor, the Attorney General or a representative from the Department of Law, and a public member. The committee meets as often as necessary to review pending applications. In recent years, ECAC meetings have averaged only once or twice a year, if needed.

Following consideration and review of applications, the Executive Clemency Advisory Committee prepares a summary and recommendation for each application and submits it to the Governor along with the complete file. The Governor then reviews each case, makes a decision and the applicant is notified of that decision. The entire process, from the time of submission of an application to the point of decision by the Governor can easily take one full year, but in some circumstances can take longer.

Some of the Factors Considered in Evaluating Applications for Clemency

Applicants for Executive Clemency should be aware that virtually their entire history is considered in evaluating an application for clemency. Applicants are required to sign waivers permitting an investigation of their employment and personal history (and medical conditions if pertinent).

Of particular importance will be the facts surrounding the offense for which clemency is requested, the presentence report, the record of the sentencing, progress reports during incarceration and behavior since release from custody. Additional factors include the person's arrest and conviction record for other offenses, and at times, the health of the applicant. Compliance with orders and conditions established by the court are especially important.

The comments of the Sentencing Judge, the District Attorney involved in the case, and comments of the Victim(s) are solicited and considered by the Executive Clemency Advisory Committee and the Governor.

In applications for commutation of sentence, the length of time already served is of particular importance.

Finally, the most important factor is the exceptional or extraordinary circumstance of the applicant that would justify use of the Governor's clemency power. Clemency is rarely granted, and only under the most exceptional of circumstances.

VI. RULES GOVERNING APPLICATIONS FOR EXECUTIVE CLEMENCY

After a Determination of Eligibility has been made:

1. The clemency application must be typewritten or fully completed in ink, preferably printed, and be legible. No one, including the applicant, is entitled to attend the hearing. Each applicant must provide the date of conviction, crime of conviction, court case number and the sentence imposed for each conviction. This information can be obtained from the clerk of court. In addition to the clemency application, all applicants are required to complete and submit the Executive Clemency Application. Documents relating to the completion or compliance with orders of the court should also accompany the application. Application forms are available from the Board of Parole -- after the initial determination of positive eligibility by the staff of the Parole Board.

2. All persons who have committed a crime under the laws of the State of Alaska or the Territory of Alaska may apply for Executive Clemency. *Applications for pardon or commutation will not be considered for convictions of municipal laws, federal laws or convictions in other states.* Applications will not be considered during pending appeals from judgments or conviction; nor, in felony cases, within three months before the expiration of sentence, except in unusually urgent and meritorious cases, or when circumstances surrounding the conviction indicate a violation of constitutional rights.

3. Generally, applications for executive clemency will not be considered until after the person has served some portion of the sentence. Applications will not be considered until the person has reached his or her parole period (where applicable) or has been denied parole. Applications may be considered earlier only upon a substantial showing of innocence or some other exceptional circumstance arising since trial, which clearly justifies a possible extension of executive clemency. Every prisoner applying prior to his or her parole eligible date must state substantial facts showing why release on parole, when eligible, would not meet the situation in the prisoner's case.

4. Applications for pardon or commutation will not be considered while parolees are on parole except in cases of prisoners serving life sentences and where the applicant has been on parole for more than two years.

5. The Governor of Alaska will not circumvent AS 28.15.181(a)(5) which speaks to revocation of driver's licenses for operating a motor vehicle or aircraft while intoxicated.

6. In the absence of exceptional circumstances, applications for pardon after completion of sentence will not be considered unless the applicant has been discharged from custody or from parole or probation for at least two years. A longer period may be required before favorable action is taken, dependent largely on the nature of the offense and the character of the applicant, both before and since the conviction. In cases of perjury, subornation of perjury or violation of a public trust involving personal dishonesty, or other crimes of a serious nature, the lapse of ten years after release is usually required.

7. If the application is denied, the Governor will not accept resubmission of an application during the four-year term of office unless substantial new information is discovered.

8. If clemency is granted, it does not become effective until it is delivered and accepted by the applicant. Once delivered, a conditional pardon or other forms of conditional clemency may be revoked by the Governor for violations of conditions imposed.

9. If clemency is granted, the applicant, as well as appropriate officials will promptly receive an original signed and sealed document of the grant of clemency. A copy will also be sent to the sentencing court, and the Alaska Department of Public Safety (Records Section), to be retained in their files.

10. Clemency ***"Will forgive, but not forget."*** All records regarding the conviction are retained by the appropriate agencies. In Alaska, there are no provisions for expungement of criminal records upon a grant of clemency.

VII. APPENDIX

DEFINITIONS

AMNESTY --- Is a form of Executive Clemency which is extended to a class or group of persons, usually persons who have all committed the same crime. It is extended without regard to the special circumstances of individual cases. Traditionally amnesties have been granted to restore social peace after a period of political upheaval.

APPLICATION FORM --- After a Determination of Eligibility has been made: The application process for Executive Clemency is begun by completing an application form and submitting it to the Alaska Board of Parole. The clemency application must be fully completed in ink, and be legible or typewritten. Each applicant must provide the date of conviction, crime of conviction, court case number and the sentence imposed for each conviction. This information can be obtained from the clerk of court. In addition to the clemency application, all applicants are required to complete and submit the Executive Clemency Questionnaire Worksheet. Letters from individuals or organizations in support of the applicant should be attached to the clemency application. Authors of such letters should include a statement relating to their knowledge of the applicant, including his or her background and present circumstances, and the reason they feel the applicant should be granted clemency. Documents relating to completion or compliance with orders of the court should be attached to the application. Application forms are available from the Board of Parole after a Determination of Eligibility is made.

BOARD OF PAROLE --- is the Alaska Board of Parole. The Governor may refer applications for executive clemency to the Board of Parole. The Board through its staff investigates each case and submits to the Executive Clemency Advisory Committee and the Governor a report of the investigation, together with all other information the Board has regarding the applicant. When the report or investigation is completed, the Board also transmits to the Executive Clemency Advisory Committee and the Governor the comments it has received from the victim.

COMMENTS REGARDING THE CLEMENCY APPLICATION --- The comments of the Sentencing Judge, the District Attorney involved in the case, and the comments of the Victim(s) are solicited and considered by the Executive Clemency Advisory Committee and the Governor. Letters submitted by those in support of the applicant's clemency application are also considered.

COMMUTATION OF SENTENCE --- is a reduction or lessening of the original sentence. Usually it takes the form of a reduction in the length of imprisonment. A commutation may be granted conditionally.

CONDITIONAL CLEMENCY --- Pardons, amnesties, commutations of sentence and remissions may be conditional. The Governor may impose any conditions and the time the conditions may be in effect may extend beyond the term of the original sentence or even for life. It is necessary to comply with the conditions imposed for the pardon, amnesty, commutation of sentence or remission to be valid.

CRIMES AGAINST PERSON --- means a crime set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330; or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41, except custodial interference under AS 11.41.320 and AS 11.41.330.

CRIMES OF MORAL TURPITUDE --- includes those crimes which are immoral or wrong in and of themselves, such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft and forgery. See AS 15.60.010(8). Contact the Division of Elections if you wish to obtain a list of the crimes of moral turpitude relating to voting rights.

EFFECTIVE DATE --- If clemency is granted, it does not become effective until it is delivered to and accepted by the applicant.

ELIGIBILITY — Any person who has committed a crime under the laws of the State of Alaska or the Territory of Alaska may apply to the Governor for executive clemency, if determined to be eligible. *Applications will not be considered for convictions of municipal laws, federal laws, or convictions in other states.* Applications for clemency will not be considered during pending appeals from judgment or conviction. No applications will be considered where a Suspended Imposition of Sentence (SIS) disposition has been granted by the court. See "Reasons for Clemency Ineligibility."

EXECUTIVE CLEMENCY — in the State of Alaska is the power granted to the Governor by the Alaska Constitution to grant pardons, commutations of sentence, amnesty and the remission of fines and forfeitures. It is a power which is exercised solely at the Governor's discretion. It is a general term used to describe pardons, commutation, amnesty or remissions.

EXECUTIVE CLEMENCY ADVISORY COMMITTEE — is historically comprised of three persons: the Lieutenant Governor, the Attorney General or a representative from the Department of Law, and a public member. The Committee reviews each case and makes a recommendation to the Governor. The Committee meets as often as necessary to review pending applications, usually only once or twice per year.

EXECUTIVE PRIVILEGE — The records, documents and reports generated during the executive clemency process are prepared for the exclusive use of the Governor. These clemency documents are confidential and are not considered public information. The Governor's final decision in each case and the official orders signed by the Governor are public information.

EFFECTIVE DATE — If clemency is granted, it does not become effective until it is delivered to and accepted by the applicant.

FIREARM — defined by AS 11.81.900(b)(24) is a weapon including a pistol, revolver, rifle, or shotgun whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury.

JURY SERVICE — A person is disqualified from serving as a juror if the person has been convicted of a felony for which the person has not been unconditionally discharged. *AS 09.20.037*

LEGAL EFFECT OF CLEMENCY — The primary legal effect of a pardon is that it sets aside a conviction for a crime committed under the laws of the State of Alaska or the Territory of Alaska. This serves to relieve the person to whom it is granted from all further punishment and other legal consequences imposed by reason of the conviction. Upon a grant of clemency the records continue to exist in court and law enforcement files. A grant of clemency ***"will forgive, but not forget."***

PARDON — is a form of Executive Clemency, which if full and unconditional, relieves an offender from further punishment and disabilities imposed by reason of a conviction of a criminal offense. It is an act of grace which represents forgiveness for the particular crime. The governor may grant pardons in whole or in part for offenses against the laws of the State of Alaska or the Territory of Alaska.

> ***CONDITIONAL PARDON*** — is a form of Executive Clemency to which a condition or conditions are attached. The pardon does not become effective until the person pardoned has performed or completed the requirements outlined by the condition or conditions. The conditional pardon can also become void if some specific act or event occurs.
>
> ***FULL PARDON*** — is a form of Executive Clemency which relieves the grantee of all legal consequences and without conditions.
>
> ***GENERAL PARDON*** — is a form of Executive Clemency usually granted to all the persons participating in a given criminal offense. [See definition of Amnesty above.]
>
> ***PARTIAL PARDON*** — is a form of Executive Clemency which relieves only a portion of punishment or absolves only a portion of the legal consequences of a crime.
>
> ***UNCONDITIONAL PARDON*** — is a form of Executive Clemency which relieves the grantee without any conditions whatsoever. It is the same as a full pardon.

PAROLE -- A prisoner, sentenced to one or more terms of imprisonment exceeding 180 days in the case of discretionary parole and of two years or more in the case of mandatory parole released by the Board or by operation of law before the expiration of the term, subject to custody and jurisdiction by the Board. Parole is a function of the Executive Branch of government.

PRISONER -- An offender confined for violation of state law, but does not include a person confined under AS Title 47.

PROBATION -- A court imposed sentence suspending incarceration and instead imposing a term of supervision in the community under the discretion of the probation officer. Probation is a function of the Judicial Branch of government.

QUESTIONNAIRE WORKSHEET -- All applicants are required to complete and submit the Executive Clemency Questionnaire Worksheet as an integral part of the Application Form. Questionnaire Worksheet forms are made available to you when the Application Form is sent.

RECORDS RETENTION -- A pardon does not eliminate or erase the conviction. The records of conviction are retained by the appropriate agencies and continue to exist in both court and law enforcement files. In Alaska there are no provisions for expungement of criminal records upon the granting of clemency.

RELEASE OF INFORMATION -- Each applicant must sign a release of information authorizing an investigation of the applicant's current and past record and character. This form is part of the clemency application.

REMISSION OF FINE -- is the forgiveness in whole or part, of a fine imposed by the court.

REMISSION OF FORFEITURE -- is the forgiveness and restoration of property or a property right forfeited by reason of conviction of the crime.

REVOCATION -- Once delivered: a conditional pardon, conditional commutation of sentence or other forms of conditional clemency may be revoked by the Governor for violations of the conditions imposed.

UNCONDITIONAL DISCHARGE -- A defendant is released from all disability arising under a sentence, including probation and parole. *AS 15.60.010(33)*

VICTIM -- as defined in AS 12.55.185(16), a "victim" means:

(A) a person against whom an offense has been perpetrated;

(B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:
  (i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or
  (ii) a parent, adult child, guardian, or custodian of the person;

(C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:
  (i) a person living in a spousal relationship with the deceased before the deceased died;
  (ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or
  (iii) any other interested person, as may be designated by a person having authority in law to do so.

VICTIM COMMENTS -- The victim may comment in writing to the Board on the application for executive clemency. See AS 33.20.080. The comments are forwarded to the Executive Clemency Advisory Committee and the Governor.

VICTIM NOTIFICATION -- If requested by the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree, the board shall send notice of an application for executive clemency submitted by the person who was convicted of that crime. The victim may comment in writing to the board on the application for executive clemency. If the victim desires notice, the victim shall maintain a current, valid mailing address on file with the Department of Corrections. The Board shall send the notice required under this section to the victim's last known address. The victim's address may not be disclosed to the clemency applicant or the applicant's attorney.

VOTING RIGHTS -- Any person convicted of a felony involving moral turpitude under state or federal law may not vote in a state, federal or municipal election from the date of the conviction through the date of unconditional discharge (*AS 15.05.030*). Upon presenting proof that the person is unconditionally discharged from custody the person may register to vote. If you wish to participate in an election in Alaska after unconditional discharge of your sentence or obtain a list of the crimes of moral turpitude, contact your voting district's regional office or: State of Alaska, Division of Elections, P.O. Box 110017, Juneau, AK 99811-0017 .

[10/2006 Clemency Handbook]

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 - Fax
Senator_Charlie_Huggins@legis.state.ak.us

State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878
www.akrepublicans.org/huggins/

Charlie Huggins
Senator

To: Legal Services
From: Senator Huggins
Re: Drafting request: Former felons & firearms
Date: 3/26/2009

BY FAX: 12 pages total including this cover

Please review the attached letter from Ross & Miner (3 pages) and the Proposed legislation memorandum with attached sample bill language (8 pages).

We would like a workdraft which would rectify the the problems Alaska ex-felons who have been pardoned or had convictions set aside are having regarding the purchase, ownership and carrying of firearms due to certain interpretations of federals agencies such as the FBI and ATF.

Contact: Sharon Long
465-5083

Jody Simpson

From: Jody Simpson
Sent: Thursday, March 12, 2009 1:17 PM
To: Jody Simpson
Subject: Sec. 11.61.200. Misconduct involving weapons in the third degree.

Sec. 11.61.200. 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 firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult 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 controlled substance 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;

(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;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 - 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person 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, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located;

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2); or

(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

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

(B) 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

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

(2) under (a)(2) or (10) of this section that

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

(B) 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

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(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) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

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

(B) 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

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and

(2) at the time of possession, the defendant was

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

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

(h) 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; or

(iv) grenade;

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

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

(D) 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.

(i) Misconduct involving weapons in the third degree is a class C felony.

Law Offices of
ROSS & MINER
A Professional Corporation
327 East Fireweed Lane, Suite 201
Anchorage, Alaska 99503

Wayne Anthony Ross
Curtis Patteson

(907) 276-5307
(907) 276-6672 - FAX

Edward L. Miner
Tamara Huffman, paralegal

21 November 2008

Senator Charlie Huggins
600 E. Railroad Avenue
Wasilla, AK 99654
State Capitol, Room 417
Juneau, AK 99801

Dear Senator:

The laws regarding possession of firearms in Alaska—laws which were contemplated and enacted by our own state legislature—are being attacked, gutted and rewritten by bureaucrats at the ATF and FBI. Attempts to correct these errors at the federal level have been ignored. It is now incumbent upon the Alaska legislature to take action to defend the rights of Alaskans. In this letter I will explain the source of the problem, illustrate particular grievances against the federal agencies involved, and offer the proper solution—a recrafting of Alaska Statute 11.61.200(g)(2).

Under Alaska law, an individual who has been convicted of a felony can have their right to bear arms restored by any of three occurrences: a pardon, a suspended imposition of sentence, or by the passage of ten years from unconditional discharge. The Alaska legislature, recognizing both the distinctions of life in Alaska and also the profound respect that the majority of Alaskans have for the right to bear arms, has made the decision to establish a means by which individuals who have previously been convicted of a felony may regain their right to bear arms. The bureaucrats at the ATF and FBI have subverted the goals of the Alaska legislature through the tortured and twisted application of limited U.S. Supreme Court cases to Alaska law. In doing so, these agencies have wrongfully deprived Alaskans of their rights.

In Caron v. U.S., the U.S. Supreme Court held that if a person who has previously been convicted of a felony is prohibited from possessing any type of firearm under state law, then they are prohibited from possessing all firearms under federal law.[1] Prior to this ruling, several states allowed previously convicted felons to regain the right to possess rifles and shotguns but prohibited them from possessing handguns.[2] Alaska law draws no distinctions among the types of firearms which a previously convicted felon may posses.[3] Alaska law allows an individual whose rights have been restored to possess rifles, shotguns and handguns. The only limit contained in our state law is upon the carrying of a concealed firearm by a person whose rights have been restored.[4] While the right of possession is fully restored, an individual who has previously been convicted of a felony may only carry a firearm concealed under limited circumstances—either while he is upon his own land or while he is engaged in outdoor activities that would "necessarily involve the carrying of a weapon for personal protection."[5]

An accurate reading of the Alaska statutes reveals that our state law should not be impacted by the Court's holding in Caron. Alaska law does not limit the "type" of firearms which a previously convicted felon may possess. Furthermore, the single limitation in place for previously convicted felons proscribes only their ability to carry a firearm in a concealed manner, and does not limit their right of possession in any way. The ATF and FBI are, however, interpreting the Alaska statute as a restriction upon possession. Because of this interpretation, Alaskans who have led productive lives, but who have convictions sometimes decades in their past, are being denied their right to own guns, and even being threatened with prosecution for serious Federal offenses.

To better understand the plight of the individuals being affected by this law, I will offer some specific examples. In 1970, at the tender age of 19, R.S. made the mistake of getting caught up in recreational drug use. He was arrested for the possession of hallucinogens and convicted of a felony. As a first-time youthful offender, he was granted a suspended imposition of sentence, and given the opportunity to mend his ways. He is now a happily married 56-year-old father. He has worked,

[1] Caron v. U.S., 524 U.S. 308, 314 (1988).
[2] See U.S. v. Tomlinson, 67 F.3d 508 (4th Cir. 1995); see also U.S. v. Dahms, 938 F.2d 131 (9th Cir. 1991).
[3] See AS 11.61.200(a) and (b).
[4] AS 11.61.200(a)(12) and (g)(2).
[5] Id. The Alaska appellate courts have not established an objective test or enumerated specific criteria to consider when determining which activities "necessarily involve the carrying of a weapon for personal protection."

hunted and fished his entire life. He only learned recently, when he applied for the purchase of a new firearm, that he is now suddenly prohibited from owning firearms, despite having been granted a suspended imposition of sentence more than 30 years ago.

R.P. was convicted of a felony in 1992. After paying for his crime, he went straight to work helping the public. He became the director of the search and rescue organization for an Alaskan borough. Governor Murkowski granted him a full pardon, expressly for the purpose of allowing him to possess a firearm to help him fulfill his duties. He recently became aware of the fact that—despite the Governor's pardon—federal law prohibits him from possessing firearms.

The Federal law has stripped Alaska of the right to make its own decision on restoring gun rights to ex-felons. The overreaching actions of the bureaucrats at the ATF and FBI have left Alaska with a single option - to amend AS 11.61.200 to remove the disability on carrying a concealed weapon by a person convicted of a felony who has had their rights restored. By removing this disability in Alaska's law, the ATF and FBI will have no basis whatsoever to challenge Alaska's laws, and we can allow ex-felons who have proven their rehabilitation to participate in the full rights that all Alaskans enjoy.

I have included the text of a sample bill that would amend AS 11.61.200, and restore Alaska's policy of allowing rehabilitated ex-felons to own firearms. I urge the Legislature to adopt these changes and to assure the continued support of the right of Alaskans to bear arms for the defense of themselves and others.

Sincerely,

Wayne Anthony Ross
Attorney at Law
Director, NRA

Memorandum

Re: Proposed legislation
File: 11.61.220 Project
Date: 9 September 2008

Several of our clients have experienced problems in either being denied an Alaska Concealed Handgun Permit (CHP) or denied permission to purchase firearms during a "National Instant Criminal Background Check System" (NICS) check.

These problems stem from the language of AS 11.61.200, the Alaska Statute for Misconduct Involving Weapons in the Third Degree. AS 11.61.200(a)(12) bars all people convicted of felonies from carrying a concealed weapon, while AS 11.61.200(g) sets out the exceptions to (a)(12)'s blanket ban.

Because of the limited nature of subsection (g)'s exceptions, the Alaska Department of Public Safety takes the position, upheld by the Alaska Supreme Court in *Gabrielle v. State of Alaska,* that anyone with a felony conviction is ineligible for an Alaska CHP. Additionally, the FBI has taken the position that the limit on a felon's ability to carry a concealed weapon under AS 11.61.200(a)(12) & (g) activate the federal ban on the possession of any firearm under 18 USC §922(g), as intepreted in *Caron v. U.S.*

I shall attempt to describe how the particular provisions of Alaska and Federal law have created these twin problems, and what we can do to attempt to fix them by changing Alaska's law.

The Alaska CHP Issue

The Alaska Department of Public Safety has taken the position that anyone with a prior felony conviction, regardless of the time since the conviction or whether the conviction was set aside or pardoned, does not qualify for an Alaska CHP. They have based this determination on the limited scope of the exceptions in AS 11.61.200(g) to the total ban in 11.61.200(a)(12) of any felon carrying a concealed firearm.

AS 11.61.200(g) only allows a convicted felon to carry a concealed firearm if; (1) the conviction has been pardoned, (2) the conviction has been set aside, or (3) 10 years have elapsed since the conviction, and either (a) the person was in their home or on land immediately adjacent to their home, or (b) was engaged in an outdoor activity that necessitated carrying the weapon for personal protection. Thus, without <u>both</u> some evidence of rehabilitation in (1)-(3), <u>and</u> observing the limited conditions for carrying in (a)-(b), a person convicted of a felony is guilty of

Misconduct Involving Weapons in the Third Degree if they carry a concealed weapon.

The Alaska Department of Public Safety's interpretation of AS 11.61.200 was upheld in *Gabrielle v. State of Alaska.*[1] There, the Supreme Court of Alaska held that a person with a felony record of any description, though not prohibited from applying for an Alaska CHP under the statutes and regulations governing eligibility for the permit, nevertheless was not entitled to an Alaska CHP because of the restrictions found in AS 11.61.200. Because this issue has been appealed to the highest court capable of deciding the issue, the only way to change this outcome is through legislation.

The NICS Check / 18 USC §922(g)(1) Issue

The FBI's National Instant Criminal Background Check System implements a federal requirement that all federally licensed firearms dealers conduct a background check on all prospective firearms purchasers. The background check screens those that have been disqualified from purchasing firearms through operation of federal law. Information is entered into the NICS system by multiple state and federal agencies, but the FBI determines whether the information provided disqualifies an individual from purchasing firearms.

Many of the federal restrictions on possession of firearms are found at 18 U.S.C. §922(g). §922(g)(1) prohibits anyone who has been convicted of a felony from possessing a firearm, however §921(a)(20) contains an exception for those felons who have had their civil rights restored (through operation of law, a pardon, or any similar means). The exception in §921(a)(20) has its own exception, however, prohibiting those convicted of a felony whose civil rights have been restored from possessing a firearm if state law prohibits them from possessing a weapon of any type.

The exception to the exception found in §921(a)(20) was interpreted by the U.S. Supreme Court in *Caron v U.S.*[2] There, the Court faced a person whose civil rights had been restored under Massachusetts law, including the right to possess long guns and handguns. However, he was not allowed to carry handguns outside his home or business, though this right was afforded to non-felons. The Supreme Court found that this restriction, though not strictly a prohibition against of possession of handguns, was enough of a restriction to activate the exception to the exception found in §921(a)(20).

Applying *Caron* to Alaska law, the FBI has taken the position that the restrictions on ex-felons carrying concealed weapons found in AS 11.61.200(a)(12) & (g) are sufficient to activate the exception to the exception found in 18 U.S.C. §921(a)(20). Because of this interpretation, ex-

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[1] 158 P.3d 813 (Alaska 2007).

[2] 524 U.S. 308 (1998).

felons in Alaska, even those who have had convictions set aside or pardoned, are barred from possessing any firearm by §922(g)(1).

The FBI's interpretation of the effect of AS 11.61.200 on the application of 18 U.S.C. §922(g)(1) is contrary to the Alaska Supreme Court's interpretation in *Gabrielle* (which was not binding on the FBI), and has been questioned in other federal cases such as the unpublished *U.S. v Flores*.[3] However, given the similarity between Alaska law and the Massachusetts law at question in *Caron* (both allowed possession of all types of weapons, but restricted where and how handguns could be carried), the FBI's interpretation of the law is not clearly incorrect. It would be possible to challenge the FBI in court, but it is far from certain that we could obtain a favorable result.

The Common Factor

The common factor in both of these issues is AS 11.61.200, and the restriction on ex-felons carrying concealed weapons in Alaska, except under certain narrow exceptions. While Alaska has several statutes covering the crime of "Misconduct Involving Weapons," enumerating different degrees of the offense, no other iteration of the statute implicates the carrying or possession of weapons by ex-felons, and so would not impact either eligibility for an Alaska CHP or eligibility under the FBI's NICS system.

Likewise, Alaska's statutes and regulations governing Alaska's CHP program (AS 18.65.700-790, 13 AAC 30.010-900) set out eligibility requirements, including disqualifications if an applicant has had multiple recent misdemeanor offenses or has been ordered by a court to attend a drug- or alcohol-rehabilitation clinic. However, none of the requirements for a CHP touch on the status of the applicant as an ex-felon; pardoned, conviction set aside, or otherwise. Thus, none of these statutes or regulations need to be revised in addressing either the CHP or NICS issue.

Therefore, a legislative fix to this issue need only modify the restrictions on ex-felons carrying or possessing weapons that are found in AS 11.61.200.

The Possible Solutions

Alaska is unusually *laissez-faire* in its approach to gun rights (being one of two states that allows concealed carry of firearms without a permit). However, Alaska also tends towards a tougher stance on crime issues than other states. In attempting to change the policy embodied in AS 11.61.200 towards the gun rights of ex-felons, we will be working in the cross-currents of these two conflicting political priorities.

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[3] 118 Fed. Appx. 49 (C.A.6 (Mich.)).

From a strictly political perspective, we could attempt to counter some of the turbulence of a legislative proposal by noting that it is federal law that has forced us to seek a modification of our state law, in order to allow us to pursue our own policy of granting forgiveness to, and restoring the rights of, ex-felons. Federal law has stripped Alaska of its right to make its own determination of how ex-felons are to exercise their gun rights, and leaves us only a simplistic all-or-nothing choice as to whether ex-felons should regain their gun rights.

There are several different methods we could pursue to change AS 11.61.200 so as to allow for ex-felons to apply for an Alaska CHP and to bypass the federal ban on possession found in 18 U.S.C. §922(g)(1). The principal question in changing the restrictions found in AS 11.61.200, however, is how far to expand the re-enfranchisement of gun rights to ex-felons.

First, in order to permit ex-felons to apply for an Alaska CHP, or to possess a weapon under 18 U.S.C. §922(g)(1) and *Caron*, we must remove the restrictions on where an ex-felon may carry a concealed weapon found in AS 11.61.200(g)(2) (I have attached two sample proposed bills with this memo for you to review). This would allow an ex-felon to carry a concealed weapon under the same circumstances that any other citizen would be able to. This would broaden the rights of ex-felons, as it allows them to carry concealed weapons where previously they were not allowed to. However, this is the only means of restoring their right to own weapons at all, given the FBI's interpretation of 18 U.S.C. §922(g)(1).

As for how far to extend re-enfranchisement, currently AS 11.61.200(g) identifies three groups of ex-felons that it restores gun rights to; ex-felons who (1) received a pardon, (2) had their conviction set aside, or (3) had more than 10 years elapse since they finished serving their sentence and who had not committed a violent felony. There is a strong argument that all three groups should be granted full re-enfranchisement, as all three demonstrate some individualized showing of rehabilitation, rather than automatically granting an ex-felon gun rights as soon as they get out of jail.

Conclusion

Alaska has made its own policy decision about how to handle the gun rights of ex-felons, however the Federal Government has stripped Alaska of the right to make our own judgments except for an all-or-nothing decision on the gun rights of ex-felons. That message of Federal interference with Alaska's laws is the message we should emphasize in attempting to amend AS 11.61.200, in order to restore the gun rights of those denied them under the federal government's ban.

Collateral references. — What constitutes "constructive possession" of unregistered or otherwise prohibited weapon under state law. 88 ALR5th 121.

Sec. 11.61.200. 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 firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult 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 controlled substance 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;

(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;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 — 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person 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, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located;

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2); or

(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

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

(B) 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

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and

the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

(2) under (a)(2) or (10) of this section that

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

(B) 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

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(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) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

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

(B) 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

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and

(2) at the time of possession, the defendant was

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

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

(h) 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; or

(iv) grenade;

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

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

"An Act Relating to The Restoration of Rights to Offenders Who Have Had Their Conviction Pardoned or Set Aside."

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

***Section 1:** AS 11.61.200(g) is amended to read:

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

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

(B) 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

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory(; AND).

((2) AND AT THE TIME OF POSSESSION, THE DEFENDANT WAS

(A) IN THE DEFENDANT'S DWELLING OR ON LAND OWNED OR LEASED BY THE DEFENDANT APPURTENANT TO THE DWELLING; OR

(B) ACTUALLY ENGAGED IN LAWFUL HUNTING, FISHING, TRAPPING, OR OTHER LAWFUL OUTDOOR ACTIVITY THAT NECESSARILY INVOLVES THE CARRYING OF A WEAPON FOR PERSONAL PROTECTION.)

"An Act Relating to The Restoration of Rights to Offenders Who Have Had Their Conviction Pardoned or Set Aside."

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

***Section 1:** AS 11.61.200(g) is amended to read:

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

(A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction; **or**

(B) 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

((C) A PERIOD OF 10 YEARS OR MORE HAS ELAPSED BETWEEN THE DATE OF THE DEFENDANT'S UNCONDITIONAL DISCHARGE ON THE PRIOR OFFENSE OR ADJUDICATION OF JUVENILE DELINQUENCY AND THE DATE OF THE VIOLATION OF (A)(12) OF THIS SECTION, AND THE PRIOR CONVICTION OR ADJUDICATION OF JUVENILE DELINQUENCY DID NOT RESULT FROM A VIOLATION OF AS 11.41 OR OF A SIMILAR LAW OF THE UNITED STATES OR OF ANOTHER STATE OR TERRITORY; AND)

(2) **a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory,** and at the time of possession, the defendant was

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

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

Michael Rovito

From: Karl Thomas [them_thangs_on_my_mind@hotmail.com]
Sent: Wednesday, April 15, 2009 12:32 PM
To: Michael Rovito
Subject: my letter for the record for sb189

Karl Thomas
8100 Boundary Ave #5
Anchorage, AK 99504
907-952-3201

Subject: SB 189 by Senator Charlie Huggins

Set aside under state law are allowed to purchase firearms under SB 189

My name is Karl Thomas. I am writing this letter to get support for this project. In essence I was convicted of a non-violent felony I was sentenced to a term of suspended imposition of sentence. My rights were restored in every way except when I try to purchase a firearm.
I was denied by the NICS after filing a voluntary appeal to them. The reason NICS denied my rights to purchase a firearm was case law Caron V. United States, 118 S. CT. 2007. Since Alaska state law restricts where a felon can possess a firearm .I am then considered to be federally prohibited by the Caron decision, since my case was set a side and all rights restored I should be able to purchase firearms, but I am not allowed to purchase firearms which is a infringement on my rights since they have been fully restored with no restrictions
I would like for the law to mimic US code federal law. 18 U.S.C. 922(g)(1) provides in pertinent part: It shall be unlawful for any person . . . who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. However, 18 U.S.C. 921 provides in pertinent part: **Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.**
Since I am not allowed to purchase firearms legally from a dealer, the only way for me to purchase a new firearm would be an illegal straw purchase or any other illegal means. I would greatly appreciate if you could correct this law so other Alaskans can purchase firearms legally after their rights have been restored.
Thank you for your time,

Takes away restriction had on their own land.

Karl Thomas 15thDay of April 2009