HB

80

<TARGET><BILL>HB 80</BILL><SUBJECT>HB
80</SUBJECT><COMM>HJUD27</COMM></TARGET>

ALASKA STATE LEGISLATURE

Member:
House Finance Committee
Legislative Budget & Audit Committee

Chair:
House Budget Sub Committees on:
- Department of Administration
- Department of Labor and Workforce Development

Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-2679
Fax: (907) 465-4822
Toll Free (800) 505-2678

Interim:
600 E. Railroad Ave
Wasilla, AK 99654
Phone: (907) 376-2679
Fax: (907) 373-4745

Representative Mark Neuman

Rep.Mark.Neuman@legis.state.ak.us

January 31, 2011

Dear Representatives Gatto

Subject: HB 80 An Act relating to self defense in any place where a person has a right to be.

Attached is a committee package for House Bill 80. I would appreciate if you could schedule this legislation to be heard on February 8th, 2011. Per our previous conversations, this is a particularly opportune time, as we will have a national expert in town to testify on this legislation. West coast NRA representative Brian Judy will be here to meet with the Committee Chair and the Governor on this and other legislation.

Included are the following:

- Letter of Request
- Current version of the bill.
- Sponsor statement.
- Names of people expected to testify with note of off-net lines needed.

Please feel free to contact me or my aide Rex Shattuck (465-2696) with any questions.

Thank you for your consideration.

Sincerely,

Representative Mark Neuman

ALASKA STATE LEGISLATURE

Member:
House Finance Committee
Legislative Budget & Audit Committee

Chair:
House Budget Sub Committees on:
- Department of Administration
- Department of Labor and Workforce Development

Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-2679
Fax: (907) 465-4822
Toll Free (800) 505-2678

Interim:
600 E. Railroad Ave
Wasilla, AK 99654
Phone: (907) 376-2679
Fax: (907) 373-4745

Representative Mark Neuman
Rep.Mark.Neuman@legis.state.ak.us

Sponsor Statement

HB 80 recognizes that Alaskan residents have a right to use deadly force to protect their family and person, whether they are at home, work, or in any place they have a right to be present. It does this by expanding your right to stand your ground when threatened and by making statutes clear that deadly force is justified not only in the case of burglary, the kidnapping of household members, but also in the case of a carjacking of an occupied vehicle and any other place a person has a right to be.

By expanding the rights of Alaskans to stand their ground in any place they are rightfully present, we tell our residents that their decision to use deadly force to defend themselves and their families will not be questioned, and make it clear that it is the **criminal** who has the duty to retreat.

House Bill 80 strengthens the legal recognition of the basic human right to defend oneself.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number
Bill Version **HB080**
() Publish Date

Identifier (file name) HB080-DPS-AST-02-07-11
Title "An Act relating to self defense in any place where a person has a right to be."
Sponsor Neuman, Feige, Lynn and Costello
Requester House Judiciary

Dept. Affected Public Safety
Appropriation Alaska State Troopers
Allocation AST Detachments
OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2012**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
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 (please identify)							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2011) cost

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Lt. Rodney Dial
Division Alaska State Troopers
Approved by Joseph Masters
Commissioner

Phone 907-247-4480
Date/Time 2/7/11 5:00 PM
Date 2/7/2011

(Revised 1/27/2011 OMB)

FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB080
2011 LEGISLATIVE SESSION

Analysis

This bill amends AS 11.81.335 (justification for the use of deadly force) by adding areas (exceptions) a person is not required to leave prior to the application of deadly force.

Passage of this legislation will have no fiscal impact on the department.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number
Bill Version: **HB080**
() Publish Date

Identifier (file name): HB080-LAW-CRIM-02-09-11
Dept. Affected: Law
Title: An Act relating to self defense in any place where a person has a right to be.
Appropriation: Criminal
Allocation: Criminal Justice Litigation
Sponsor: REPRESENTATIVE(s) NEUMAN, FEIGE, LYNN, COSTELLO
Requester: (H) JUDICIARY
OMB Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2012**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
Personal Services	384.6		384.6	384.6	384.6	384.6	384.6
Travel	2.2		2.2	2.2	2.2	2.2	2.2
Services	53.4		53.4	53.4	53.4	53.4	53.4
Commodities	8.0		8.0	8.0	8.0	8.0	8.0
Capital Outlay	1.8		1.8	1.8	1.8	1.8	1.8
Grants							
Miscellaneous							
TOTAL OPERATING	**450.0**	**0.0**	**450.0**	**450.0**	**450.0**	**450.0**	**450.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	450.0		450.0	450.0	450.0	450.0	450.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	**450.0**	**0.0**	**450.0**	**450.0**	**450.0**	**450.0**	**450.0**

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time	**2.0**		2	2	2	2	2
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by: Eileen Donahue, Division Operations Manager — Phone: 465-5427
Division: Administrative Services — Date/Time: 2/9/11 11:30 AM
Approved by: John J. Burns, Attorney General — Date: 2/9/2011
Department of Law

(Revised 1/27/2011 OMB)

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 080

Analysis

House Bill 80 expands the places from which a person need not retreat before using deadly force in self defense to any place the person has a right to be. The Criminal Division anticipates it would need 2 new FTE attorney positions to handle the increased cases, to both screen referrals and prosecute those that are accepted. This number is based upon the referral of 1,155 cases in 2010 in which self defense was a potential justification.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL, GOVERNOR

Mailing: 310 K Street, Suite 308
Anchorage, Alaska 99501
Phone: (907) 269-6250
Fax: (907) 269-7939

March 15, 2010

Hon. Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 381

Dear Chairman Ramras:

I am writing to express my serious concern over the current language in House Bill 381. Every experienced prosecutor with whom I have spoken about this bill uniformly agrees that it would promote violence and be a bad idea for our state. We believe that as drafted this bill will ***encourage*** unnecessary violence in our state. Whatever source one thinks our laws should be drawn from – the ten commandments which say "thou shall not kill," simple morality, utilitarianism principles of the greater good, or simply the concept that life is sacred –this bill would encourage the needless taking of human life.

AS 11.81.335(b) as currently written sets forth the duty to retreat before resorting to deadly force. It requires that if "with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area" then the person must do so. This avoids the ***unnecessary*** loss of life and encourages our citizens to seek ways other than violence to resolve disputes. The addition of subsections 5 and 6 to this statute eradicates the duty to retreat - in fact should they be enacted, there would no longer be a duty to retreat in Alaska. That is to say if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized ***by law*** to kill person B. This does not promote the protection of our citizens or suggest that Alaska as a state places a high value on life itself. While this is highly unlikely to have been the goal of the bill's sponsors, it is nevertheless the result of what has been proposed. This is best explained by closely examing the language of the proposed changes and additions.

Section 1 of the bill proposes amending AS 11.81.335(b) by adding a subsection (5) that would say there would be no duty to retreat when the person is "in a vehicle" owned, leased, used, or even just occupied with the owner's consent. Here are but just three examples of how this would encourage violence:

First example:

A person picks up a hitchhiker, or offers a ride to someone, and, for whatever reason, a confrontation arises while in the vehicle such that deadly force could be used, but for the duty to retreat. Under the current law the hitchhiker must leave your vehicle if he knows he can do so safely. Under the proposed amendment, that hitchhiker would be authorized to kill the driver instead -- even if he could have simply walked away. These facts are similar of a recent murder trial in Anchorage, but they are close. The defendant was convicted of and sentenced for second-degree murder. The case is now on appeal. Why would we want to say killing another person is okay when it could be avoided? Why would we want to authorize the taking of a life when one could walk away in complete safety?

Second Example:

Joe Smith drives to a party. At the party he gets into an altercation and is thrown out of the party. He goes to his car and gets inside to leave. Before leaving, Mr. Smith sees the person with whom he got into the altercation. Though Mr. Smith is in his car, behind the wheel and ready to leave, he fears the other guy may come after him. Instead of driving off – which he could do with complete personal safety, he gets out of his car and grabs a shotgun from the trunk and kills the other man. Again, these are facts similar to a recent murder trial in Anchorage. The defendant was convicted of and sentenced for manslaughter. The case is now on appeal. This is yet another situation in which our current law requires our citizens to walk away if they can do so with safety, but this proposed change in the law would authorize killing another human being instead.

Third Example:

An occupant in car A points a gun at the occupant in car B. If the occupant in car B can drive away with complete safety, then under the current law he must do so. Under the proposed change, the driver in car B would be authorized by this bill to open fire instead of driving away. The law of self-defense in Alaska requires the state to prove beyond a reasonable doubt a defendant's claim of self-defense is not true. It is difficult to prove a negative. If the state cannot prove the negative beyond a reasonable doubt, then at least the state can try to prove that the driver of car B had a duty to retreat and could have done so. This law would eliminate that duty. That is a recipe for inviting gang violence on our streets. These facts are in fact very similar to another case prosecuted by our department. In 2006 there was a shooting at Reka and Bragaw in Anchorage. Two vehicles with young men exchanging gunfire. One young man was killed and the two men in the other vehicle were convicted of murder. One of those cases is on appeal. This loss of life occurred for one of the participants. What about the innocent bystander? For example, there was the election day shooting in Anchorage when a campaign worker for former Gov. Murkowski was hit by a stray bullet at campaign HQ in Anchorage across from the Sears mall. That case involved two vehicles with young men – not in gangs, but still rivals – who opened fire on one another. While we did prosecute the shooters in that case, do so would have been impossible under this law.

This bill would unintentionally encourage such conduct by making it legal or at least offering a defense – which even if not true – could not be disproved. In each of the four examples the defendants were convicted, but this proposed change would make such prosecutions much harder, if even possible.

The proposed subsection (6) in AS 11.81.330(b) would almost completely eliminate the duty to retreat. That subsection says there is no such duty when a person is "in any place where the person has a right to be." That means in the Diamond Mall, Sears Mall, McDonalds, or any other public location a person is no longer required to walk away from a confrontation, but instead may kill another citizen even if they could have walked away with complete safety. This does not express a value for human life. This does not encourage finding a resolution for disputes other than violence. The only time there would be a duty to retreat is if the person is some place they have no right to be – they must be trespassing, or committing a burglary in order to have such a duty. With this change you might as well simply eliminate the duty to retreat completely from our statutes.

The bill also proposes adding a new section that whittles away some of the other protections put in place to prevent unnecessary taking of human life. Our current self- defense law is set up with both a subjective and objective test to determine when deadly force is authorized. The subjective test means the person using the force believes he/she needs to do so. The objective tests means the "reasonable person" would have concluded the same thing. The added section proposes to eliminate the objective test in several circumstances: burglary, carjacking, and kidnapping. That is it takes away from the jury the question of whether a reasonable person would view a particular event as unlawful force against a person that required a response of deadly force. At first blush this seems reasonable. However, when you examine what is proposed more closely, it becomes very disturbing. To understand why, you must first understand each of the three crimes it references.

Burglary is found in AS 11.46 and not AS 11.41 because it is a crime against property, not a person. Burglary requires a person to enter a building with the intent to commit a crime – theft, vandalism, and assault are all examples. What must be noted though is that no person needs to be in the building in order for this to be a crime. If a person breaks into a home or business to steal something, this is a burglary. If a student breaks into a school to vandalize it, this is a burglary. If a person breaks into a home to assault another person – even if no one is home, this is still a burglary because burglary only addresses the entry of premises with the intent to commit a crime (called a target crime) whether that (target) crime is committed or not. This is why burglary is classified as a crime against property and not against a person.

Under current law ***non***-deadly force may be used to protect property, and deadly force is ***only*** authorized when terminating an arson or attempted arson on a dwelling or occupied building (*See* AS 11.81.350(b)), or when terminating a burglary upon an occupied building or dwelling if the person using the force is in possession or control of that premises, or is a guest. *See* AS 11.81.350(c)).

The current bill would now authorize deadly force against a person who burgles a dwelling whether anyone was home or not. Thus deadly force may be used even when no human life is at risk.

The proposed bill would also authorize ***any*** person to use deadly force as compared to only a person who is in possession or control of or is an invited guest in the dwelling. This means the guy driving down the street may kill a person he thinks is breaking into a home. The state must disprove defense of property, so the state must disprove that a victim was committing burglary. While this new section is fraught with the potential for misunderstandings to lead to the unnecessary loss of human life, there is another more serious problem with this section. This new section authorizes deadly force against a person who is currently committing or ***had committed*** a burglary. This language authorizes vigilantism. It authorizes deadly force against any person whom the person using the force "had reason to believe" ***had*** – past tense – had committed a burglary. This new section says such force ***is*** reasonable. The only question left is if the person using the force also thought it was "reasonable."

The section on carjacking does the same thing. It authorizes the use of deadly force against someone who ***had*** -- past tense -- taken a car by force. Even if no human life was at risk in the taking, this law would say it is okay to kill to keep your car from being taken from you or afterwards. That sounds like retaliation and vigilantism, not like a legislature enacting laws to protect our citizens and improve our lives.

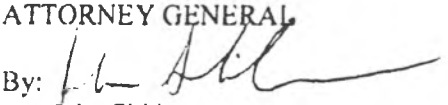
The kidnapping subsection has the same issue with past tense. In each and every section this bill would legalize and authorize vigilantism.

Finally the bill also says no arrest may be made "unless the agency" determines that there is probable cause that the force that used was unlawful. This puts the police in a difficult position especially when confronting gang related violence. It is also unclear to whom "the agency" refers. This could potentially require magistrates and grand juries to start deciding if self-defense has been disproven. This in turn would require the state to act as defense counsel for the defendant to present such a defense only to have to then disprove it. This may sound confusing, and that is because this bill could cause serious problems in the criminal justice system with regard to self-defense law.

Thank you for your consideration of this letter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
John Skidmore
Assistant Attorney General

DSS:JS: sf

cc: House Judiciary Committee Members

the general provision's own terms, since the criminal mischief law would be a "statute defining the offense" in a manner that "provides exemptions or defenses dealing with the justification." McGee v. State, 162 P.3d 1251 (Alaska 2007).

Defense for illegally taking game. — Because a regulation (5 AAC 81.375) outlining the defense of necessity for illegally taking game was properly enacted in accordance with the legislative grant of authority to the Board of Game, it established the only circumstances under which the defense could be interposed to a claim that game was illegally taken. Jordan v. State, 681 P.2d 346 (Alaska Ct. App. 1984).

Evidence of necessity. — Before a person is entitled to an instruction on "necessity" there must be "some evidence" in the record that the action which the person took was necessary, i.e., that he had no other alternative, to avoid an irreparable injury which, under the circumstances, outweighed any injury likely to result from the action taken. Schnabel v. State, 663 P.2d 960 (Alaska Ct. App. 1983).

Trial judge erred in precluding defendant from presenting a necessity defense because the judge concluded that defendant had had an adequate, reasonably available alternative to his action; the adequacy of available alternatives is only a matter of law in cases where the defendant knew or reasonably should have known of the availability and reasonableness of the alternatives, and defendant's evidence was held to have created a jury question sufficient to warrant a necessity instruction. Allen v. State, 123 P.3d 1106 (Alaska Ct. App. 2005).

A defendant relying on necessity to justify an escape must present some evidence justifying his continued absence from custody as well as his initial departure because escape under state law is a continuing offense. Wells v. State, 687 P.2d 346 (Alaska Ct. App. 1984).

In a prosecution for driving with a suspended license in violation of AS 28.15.291, evidence of the defendant's two prior convictions for driving while intoxicated was not properly admitted to contest the defense of necessity because the jury might have been prejudiced. Nelson v. State, 691 P.2d 1056 (Alaska Ct. App. 1984).

In order to satisfy the "some evidence" test, a person claiming necessity in justification of a "continuing offense" must offer some evidence that the continued violation of the law—as well as the initial violation— [illegible] Reeve v. State, 764 P.2d 324 (Alaska Ct.

; testimony. — In a prosecution of irst degree custodial interference, the plied Gerlach v. State, 699 P.2d 358 985), too broadly when it barred defen- y: defendant, who disclaimed any reli- ffirmative defense of necessity, was ify that he did not have the conscious hhold his child for a protracted period, fered testimony did not appear plausi- tate, 66 P.3d 21 (Alaska Ct. App. 2003).

hreatened harm emanates from a e, an actor who violates the law in can defend only on the grounds of e of others, or crime prevention. Cleveland v. Municipality of Anchorage, 631 P.2d 1073 (Alaska 1981).

Defense unavailable. — Defense of necessity was unavailable to defendants charged with criminal trespass in an abortion clinic. Cleveland v. Municipality of Anchorage, 631 P.2d 1073 (Alaska 1981); Bird v. Municipality of Anchorage, 787 P.2d 119 (Alaska Ct. App. 1990).

Defense of necessity was inapplicable where appellant had failed to pursue adequate alternatives in judicial and administrative remedies that were available to him. Schnabel v. State, 663 P.2d 960 (Alaska Ct. App. 1983).

The trial court did not err in denying defendant the right to rely on a necessity defense in prosecution for custodial intervention in the first degree. Gerlach v. State, 699 P.2d 358 (Alaska Ct. App. 1985).

Under the provisions of AS 11.81.320(a) and 11.81.900(b)(2)(A) and (b)(18)(A) (now (b)(19)(A)), appellant failed to establish the defense of necessity to the crime of escape because he failed to seek administrative relief from prison officials and he failed to offer a legitimate justification for his decision to remain a fugitive for 13 months. Lacey v. State, 54 P.3d 304 (Alaska Ct. App. 2002).

Defense of necessity was unavailable to defendant who argued need for marijuana for medical purposes, because defendant should have argued the separate medical marijuana defense available in Alaska. Noy v. State, 83 P.3d 538 (Alaska Ct. App. 2003), rehearing denied, 83 P.3d 545 (Alaska Ct. App. 2003).

Facts sufficient to place justification defense in issue. — Defendant's conviction of criminal mischief was reversed where defendant presented some evidence placing the justification defense under AS 11.81.320(a) at issue by testifying that the victim had threatened to run over him, he was frightened, and he broke the windows of the victim's truck to prevent the victim from carrying out his threat, and because the trial court erroneously instructed the jury that defendant bore the burden of proving the defense by a preponderance of the evidence. McGee v. State, 162 P.3d 1251 (Alaska 2007).

Jury instruction. — In prosecution for third-degree criminal mischief for damaging a truck owned by defendant's mother's lover following an altercation, the trial court properly instructed the jury that defendant's actions were potentially justifiable under the defense of necessity.

Jury instruction unwarranted. — In the absence of any evidence explaining that an escaped convict's continued absence resulted from duress, or otherwise justifying his continuing absence, the trial court's refusal to instruct the jury on the defense of necessity was not error. Wells v. State, 687 P.2d 346 (Alaska Ct. App. 1984).

Trial court properly declined to instruct on the necessity defense at defendant's trial for driving while intoxicated, where defendant failed to produce "some evidence" that she brought her conduct into compliance with the law as soon as the necessity ended. Reeve v. State, 764 P.2d 324 (Alaska Ct. App. 1988).

Quoted in McCracken v. State, 743 P.2d 382 (Alaska Ct. App. 1987).

Cited in Gudmundson v. State, 763 P.2d 1360 (Alaska Ct. App. 1988); Clucas v. State, 815 P.2d 384 (Alaska Ct. App. 1991).

Sec. 11.81.330. Justification: Use of nondeadly force in defense of self. (a) A person is justified in using nondeadly force upon another when and to the extent the

person reasonably believ
reasonably believes to be
(1) the person used the
(2) the person claiming
physical injury to the othe
(3) the person claiming
(4) the force used was th
person claiming self-defens
(A) acting alone or with
one or more other persons;
(B) a participant in a fe
flight from a felony transac
(C) acting alone or with
perceived conduct by a riva
rival group, if the person us
acting, has a history or repu
(b) A person who is not j
listed in (a)(1) — (3) of this s
has withdrawn from the enc
other person, but the other
unlawful force. (§ 10 ch 166
2006)

Effect of amendments. — The 2
effective July 1, 2004, added paragr
The 2006 amendment, effective
2006, rewrote the section.

Elements of defense of necessity
and AS 11.81.340 contemplate a situ
force is used by one who reasonably be
is necessary to prevent the use of
against a third person. Thus, the defer
of an objective element, i.e., a reason
force is necessary and a subjective el
actual belief that force is necessary.
698 P.2d 1233 (Alaska Ct. App. 1985).

Requirement of imminency. — S
this section, does not specifically menti
ment of imminency but this section ca
this point because the legislature place
ment of imminency in the statutory
"force" contained in AS 11.81.900(b)(23)
Xi Van Ha v. State, 892 P.2d 184 (Al
1995).

A defendant claiming self-defense a
or the use of force must prove that they
that was reasonably perceived to be
imminent harm. A defendant's reasonal
harm will come at some future time is n
support a claim of self-defense or defens
Xi Van Ha v. State, 892 P.2d 184 (Alaska Ct
Inevitable harm is not the same a
harm. Xi Van Ha v. State, 892 P.2d 184
App. 1995).

Reasonable fear of attack. — Wher
defendant asserts that he or she acted in
the law does not require the defendant t
or she actually faced imminent deadly
the defendant's fear turns out to hav
even, the defense still may be establi

Section 11.81.330

person reasonably believes it is necessary for self-defense against what the person reasonably believes to be the use of unlawful force by the other person, unless

(1) the person used the force in mutual combat not authorized by law;

(2) the person claiming self-defense provoked the other's conduct with intent to cause physical injury to the other;

(3) the person claiming self-defense was the initial aggressor; or

(4) the force used was the result of using a deadly weapon or dangerous instrument the person claiming self-defense possessed while

(A) acting alone or with others to further a felony criminal objective of the person or one or more other persons;

(B) a participant in a felony transaction or purported transaction or in immediate flight from a felony transaction or purported transaction in violation of AS 11.71; or

(C) acting alone or with others in revenge for, retaliation for, or response to actual or perceived conduct by a rival or perceived rival, or a member or perceived member of a rival group, if the person using deadly force, or the group on whose behalf the person is acting, has a history or reputation for violence among civilians.

(b) A person who is not justified in using force in self-defense in the circumstances listed in (a)(1) — (3) of this section is justified in using force in self-defense if that person has withdrawn from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force. (§ 10 ch 166 SLA 1978; am § 17 ch 124 SLA 2004; am § 2 ch 68 SLA 2006)

Effect of amendments. — The 2004 amendment, effective July 1, 2004, added paragraph (a)(4).

The 2006 amendment, effective September 13, 2006, rewrote the section.

Editor's notes. — Section 32(a), ch. 124, SLA 2004, provides that the 2004 amendment of (a) of this section applies "to offenses committed on or after July 1, 2004."

NOTES TO DECISIONS

Elements of defense of necessity. — This section and AS 11.81.340 contemplate a situation in which force is used by one who reasonably believes that force is necessary to prevent the use of unlawful force against a third person. Thus, the defense is composed of an objective element, i.e., a reasonable belief that force is necessary and a subjective element, i.e., an actual belief that force is necessary. David v. State, 698 P.2d 1233 (Alaska Ct. App. 1985).

Requirement of imminency. — Subsection (a) of this section, does not specifically mention the requirement of imminency but this section can be silent on this point because the legislature placed the requirement of imminency in the statutory definition of "force" contained in AS 11.81.900(b)(23) (now (b)(27)). Xi Van Ha v. State, 892 P.2d 184 (Alaska Ct. App. 1995).

A defendant claiming self-defense as justification for the use of force must prove that they acted to avoid what was reasonably perceived to be a threat of imminent harm. A defendant's reasonable belief that harm will come at some future time is not sufficient to support a claim of self-defense or defense of others. Xi Van Ha v. State, 892 P.2d 184 (Alaska Ct. App. 1995).

Inevitable harm is not the same as imminent harm. Xi Van Ha v. State, 892 P.2d 184 (Alaska Ct. App. 1995).

Reasonable fear of attack. — When a homicide defendant asserts that he or she acted in self-defense, the law does not require the defendant to prove that he or she actually faced imminent deadly attack. Even if the defendant's fear turns out to have been mistaken, the defense still may be established if the defendant proves that, under the circumstances, he or she reasonably feared imminent deadly attack at the hand of the victim. McCracken v. State, 914 P.2d 893 (Alaska Ct. App. 1996).

Evidence of victim's character for violence. — When a homicide defendant raises the defense of self-defense, evidence concerning the victim's character for violence is potentially admissible for two reasons: First, it may tend to demonstrate who was the initial aggressor in the confrontation; second, it may tend to demonstrate that the defendant's fear for imminent deadly force at the victim's hand was reasonable. McCracken v. State, 914 P.2d 893 (Alaska Ct. App. 1996).

Evidence of victim's conduct. — In assault case, evidence of specific instances of the victim's violent conduct was necessary to enable the jury to determine how much force a reasonable person with defendant's knowledge of the victim's propensity for violence would have felt compelled to use in self-defense. Amarok v. State, 671 P.2d 882 (Alaska Ct. App. 1983).

Jury properly rejected defendant's theory of self-defense where there was ample evidence from which reasonable jurors could have concluded that the victim was not threatening defendant with deadly force at the time defendant stabbed the victim. Morrell v. State, 216 P.3d 574 (Alaska Ct. App. 2009).

Mental dysfunction not a consideration. — The reasonableness of a defendant's perceptions and actions must be evaluated from the point of view of a reasonable person in the defendant's situation, not a person suffering mental dysfunction. Xi Van Ha v. State, 892 P.2d 184 (Alaska Ct. App. 1995).

Instructions. — Burden is on defendant to produce some evidence in support of claim of self-defense before he is entitled to jury instruction on that de- r v. State, 648 P.2d 111 (Alaska Ct. App.

rectly declined to instruct the jury on where there was no imminent danger and as shot from behind. Xi Van Ha v. State, 4 (Alaska Ct. App. 1995).

estion. — Even a weak or implausible claim is a question for the jury. Folger v. 2d 111 (Alaska Ct. App. 1982).

instruction. — In prosecution for first- ult while it was only defendant's own hich supported his theory that he entered use in a non-aggressive manner with the n of conversing with the victim, there was ce that defendant did not provoke a dis- victim under circumstances that he knew or should have known would result in mortal combat, and therefore defendant was entitled to have his self-defense claim, weak as it may have been, properly determined by the jury. Brown v. State, 698 P.2d 671 (Alaska Ct. App. 1985).

Giving instruction misallocating the burden of proof on self-defense amounted to plain error. Brown v. State, 698 P.2d 671 (Alaska Ct. App. 1985).

Applied in Kirby v. State, 649 P.2d 963 (Alaska Ct. App. 1982).

Quoted in Cleveland v. Municipality of Anchorage, 631 P.2d 1073 (Alaska 1981); Carson v. State, 736 P.2d 356 (Alaska Ct. App. 1987); Walsh v. State, 758 P.2d 124 (Alaska Ct. App. 1988).

Cited in Bell v. State, 658 P.2d 787 (Alaska Ct. App. 1983); State v. Walker, 887 P.2d 971 (Alaska Ct. App. 1994); Lamont v. State, 934 P.2d 774 (Alaska Ct. App. 1997).

Sec. 11.81.335. Justification: Use of deadly force in defense of self. (a) Except as provided in (b) of this section, a person who is justified in using nondeadly force in self-defense under AS 11.81.330 may use deadly force in self-defense upon another person when and to the extent the person reasonably believes the use of deadly force is necessary for self-defense against

(1) death;

(2) serious physical injury;

(3) kidnapping, except for what is described as custodial interference in the first degree in AS 11.41.320;

(4) sexual assault in the first degree;

(5) sexual assault in the second degree;

(6) sexual abuse of a minor in the first degree; or

(7) robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter, except there is no duty to leave the area if the person is

(1) on premises

(A) that the person owns or leases;

(B) where the person resides, temporarily or permanently; or

(C) as a guest or express or implied agent of the owner, lessor, or resident;

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380;

(3) in a building where the person works in the ordinary course of the person's employment; or

(4) protecting a child or a member of the person's household. (§ 10 ch 166 SLA 1978; am § 10 ch 4 SLA 1990; am § 3 ch 68 SLA 2006)

Cross references. — For defense to murder, see AS 11.41.115.

Effect of amendments. — The 2006 amendment, effective September 13, 2006, rewrote the section.

NOTES TO DECISIONS

Annotator's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.190.

A finding of necessity is required before the homicide can be justifiable. Gray v. State, 463 P.2d 897 (Alaska 1970).

Defendant failed to make showing of necessity required to present defense of justifiable homicide. — See Des Jardins v. State, 551 P.2d 181 (Alaska 1976).

Standards by which party attacked may act. — Where one is attacked by another with a deadly weapon, the party attacked may, if he does so honestly and in good faith, safely act in the light of his

surroundings, and on the time. Owens v. United S 1904).

To employ self-defense both an objective and sul have actually believed de protect himself, and his reasonable person would h stances. Weston v. State, 6

Focus on circumstar reasonable person. — Th a prosecution for mansl circumstances be such that believe that she was in im great bodily injury, thus t stances as they would appe and the intoxication of the that question since an ac ained regardless of wh Nygren v. State, 616 P.2d

Unreasonable subject An unreasonable subjectiv for use of deadly force ma reduce murder to manslau P.2d 1186 (Alaska Ct. Ap grounds, 682 P.2d 1119 (Al

Trial court did not err i jury on self-defense in an theory of self-defense was v. State, — P.3d — (Alask memorandum opinion).

A person who provoke right to self-defense. Th tended to preclude a pers from claiming self-defense victim of the felony, but al vening in an attempt either apprehend the criminal. G Alaska 1970).

Where the defendant co cinde an immediate threat a situation so fraught with claim of self-defense to an therefrom. This holding is where the armed robbery where there is grave danger of life because a weapon is b the felony. Gray v. State, 46

A person who commits an right to claim as a defense himself against the use of ex attended victim of the rob intervening to prevent the c criminal, absent a factual s violence occurred, the da the armed robbery no lon Rptr. 897 (Alaska 1970).

Exceptions to forfeitu forfeits the right two situations: 1 deadly force (i.e., one w only his fists or some deadly force, the initial himself against the de or withdraws from the he may then defen Castillo v. State, 614

Use of unnecessary for uses unnecessary for not the person sought person to help with a

nown would result in mortal combat defendant was entitled to have his im, weak as it may have been, properly the jury. Brown v. State, 698 P.2d 671). 1985).

ruction misallocating the burden f-defense amounted to plain error. 698 P.2d 671 (Alaska Ct. App. 1985 Jirby v. State, 649 P.2d 963 (Alaska Ct

leveland v. Municipality of Anchorage, Alaska 1981); Carson v. State, 736 P.2d App. 1987); Walsh v. State, 758 P.2d App. 1988).

v. State, 658 P.2d 787 (Alaska Ct. App. Walker, 887 P.2d 971 (Alaska Ct. App. . State, 934 P.2d 774 (Alaska Ct. App.

n defense of self. (a) Except d in using nondeadly force in f-defense upon another person ıse of deadly force is necessary

dial interference in the first

if the person knows that, with ers being defended, the person area of the encounter, except

ly; or
lessor, or resident;
of the officer's employment or

nary course of the person's

hold. (§ 10 ch 166 SLA 1978

ndments. — The 2006 amendment, er 13, 2006, rewrote the section.

sent defense of justifiable homi- s Jardins v. State, 551 P.2d 181

which party attacked may act. attacked by another with a deadly attacked may, if he does so honestly h, safely act in the light of his circumstances, and on the appearances to him at the time. Owens v. United States, 130 F. 279 (9th Cir. 1904).

To employ self-defense a defendant must satisfy both an objective and subjective standard: he must have actually believed deadly force was necessary to protect himself, and his belief must be one that a reasonable person would have held under the circumstances. Weston v. State, 682 P.2d 1119 (Alaska 1984).

Focus on circumstances as they appear to reasonable person. — The defense of self-defense in a prosecution for manslaughter requires that the circumstances be such that a reasonable person would believe that she was in imminent danger of death or great bodily injury, thus the focus is on the circumstances as they would appear to a reasonable person, and the intoxication of the appellant is not germane to that question since an actual belief may be entertained regardless of whether one is intoxicated. Nygren v. State, 616 P.2d 20 (Alaska 1980).

Unreasonable subjective belief as defense. — An unreasonable subjective belief as to justification for use of deadly force may be used as a defense to reduce murder to manslaughter. Weston v. State, 656 P.2d 1186 (Alaska Ct. App. 1982), rev'd on other grounds, 682 P.2d 1119 (Alaska 1984).

Trial court did not err in refusing to instruct the jury on self-defense in an assault case because any theory of self-defense was purely speculative. Clarke v. State, — P.3d — (Alaska Ct. App. Nov. 4, 2009), (memorandum opinion).

A person who provokes a difficulty forfeits his right to self-defense. This doctrine has been extended to preclude a person who commits a felony from claiming self-defense not only to the intended victim of the felony, but also as to any person intervening in an attempt either to prevent the crime or to apprehend the criminal. Gray v. State, 463 P.2d 897 (Alaska 1970).

Where the defendant commits a felony which includes an immediate threat of violence, he has created a situation so fraught with peril as to preclude his claim of self-defense to any act of violence arising therefrom. This holding is limited to the situation where the armed robbery is still in progress and where there is grave danger of violence, injury, or loss of life because a weapon is being used to consummate the felony. Gray v. State, 463 P.2d 897 (Alaska 1970).

A person who commits an armed robbery forfeits his right to claim as a defense the necessity to protect himself against the use of excessive force by either the intended victim of the robbery or by any person intervening to prevent the crime or to apprehend the criminal, absent a factual showing that at the time the violence occurred, the dangerous situation created by the armed robbery no longer existed. Gray v. State, 463 P.2d 897 (Alaska 1970).

Exceptions to forfeiture by aggressor. — An aggressor forfeits the right to claim self-defense except in two situations: (1) where an aggressor using nondeadly force (i.e., one who begins an encounter, using only his fists or some nondeadly weapon) is met with deadly force, the initial aggressor may justifiably defend himself against the deadly attack; (2) when an aggressor withdraws from the altercation that he has started, he may then defend himself from further attack. Castillo v. State, 614 P.2d 756 (Alaska 1980).

Use of unnecessary force by officer. — If an officer uses unnecessary force in making a lawful arrest and the person sought to be arrested believes, and has reason to believe, that he is in danger of being killed or of receiving great bodily harm, he may defend himself, even to the point of taking the life of the officer. The rule of self-defense applies to the case of an officer attempting to make an arrest, who abuses his authority and transcends the bounds thereof by the use of unnecessary force and violence as well as to the case of a private individual who unlawfully uses such force and violence. Gray v. State, 463 P.2d 897 (Alaska 1970).

When possibility of retirement by defendant in issue. — The possibility of retirement by a defendant fearful of his life is not in issue unless at the time of the affray he was an intruder upon the ground where the killing occurred. De Groot v. United States, 78 F.2d 244 (9th Cir. 1935).

Mere threats insufficient to justify homicide. — Threats unaccompanied at the time of the killing with any attempt to carry them into execution are insufficient to justify homicide. Ball v. United States, 147 F. 32 (9th Cir. 1906).

Threat of deadly force not supported by evidence. — Although evidence did show that victim, having learned about common-law wife's affair with another man, was at times angry and threatening in the days before his death, these pre-event occurrences suggested nothing more than motive and a possible willingness on victim's part to use deadly force at some future time; none of the evidence concerning the circumstances surrounding the shooting itself supported the conclusion that victim's prior expressions of anger culminated in an actual use or threat of deadly force by victim, or that his killer acted in the reasonable belief that the use of deadly force in self-defense was necessary to protect against victim. Hilbish v. State, 891 P.2d 841 (Alaska Ct. App. 1995).

Evidence as to the character or reputation of the deceased for turbulence or violence is not admissible unless the defendant is relying on self-defense or justification for his act. Marrone v. State, 359 P.2d 969 (Alaska 1961).

Defense too speculative. — Although the State offered no motive for defendant's attack on the victim and defendant was bleeding from a wound to his thigh when the police stopped his car, under all of the evidence, any argument that defendant acted in self-defense or as a result of serious provocation by the victim would have been based on pure speculation and defendant's request for jury instructions on self-defense and heat of passion were properly denied. Hamilton v. State, 59 P.3d 760 (Alaska Ct. App. 2002).

Jury question. — Whether or not under all the circumstances the accused pleading self-defense had the right to stand his ground depends upon a conclusion of fact, which conclusion is one for the jury. Frank v. United States, 42 F.2d 623 (9th Cir. 1930).

Even a weak or implausible self-defense claim is a question for the jury. Folger v. State, 648 P.2d 111 (Alaska Ct. App. 1982).

The burden of establishing self-defense is upon the defendant. Frank v. United States, 42 F.2d 623 (9th Cir. 1930).

Burden is on defendant to produce some evidence in support of claim of self-defense before he is entitled to jury instruction. Folger v. State, 648 P.2d 111 (Alaska Ct. App. 1982).

When burden sustained. — The burden of establishing self-defense is sustained when, as a result of the whole evidence, a reasonable doubt has been created in the minds of the jury as to whether or not the homicide was in self-defense. If, from a consideration of the whole evidence, the jury entertains a

reasonable doubt upon that question, that doubt is to be determined, like all other doubts in the case, in favor of the defendant. Frank v. United States, 42 F.2d 623 (9th Cir. 1930).

On the issue of self-defense, where the prosecution rests with bare proof of the homicide, the burden of going forward with the evidence is on the defendant, and he must offer proof of facts upon that issue. It is not enough for him to say, "I did it in self-defense," whereupon the prosecution must establish the negative. The proofs of the accused are not required to establish self-defense by preponderance of the evidence. The evidence adduced, however, must be sufficient to require the consideration of a reasonable doubt as to the justification for the homicide. To that extent there is a burden of proof on the defendant. De Groot v. United States, 78 F.2d 244 (9th Cir. 1935).

Distinction between burden on prosecution and burden upon defendant. — Logically there is a possible distinction between the burden on the prosecution to prove the absence of self-defense beyond a reasonable doubt and the burden upon the defendant to prove affirmatively enough to create a reasonable doubt that he so acted. The burdens seem different if any value to the accused is to be given to the word "beyond" in the historic phrase "beyond a reasonable doubt." Proof beyond a reasonable doubt suggests something less than such a doubt; that the jury's minds must travel a less distance from the presumed innocence of the accused. It suggests that something more may be required of the defendant to bring the minds of the jury to the full possession of a reasonable doubt than into the lesser area of belief beyond a reasonable doubt; an area between that beyond reasonable doubt and affirmative belief in the defendant's innocence. De Groot v. United States, 78 F.2d 244 (9th Cir. 1935).

Tests for self-defense instruction. — Before a self-defense instruction will be required, two evidentiary tests must be met. First there must be some evidence that excessive force was used to effect an arrest or stop the commission of a felony. Second, there must be some evidence from which a jury could conclude that the dangerous situation created by the felony no longer existed. Gray v. State, 463 P.2d 897 (Alaska 1970).

A self-defense instruction must be given if there is evidence from which a reasonable juror could entertain a reasonable doubt as to the defendant's guilt. Weston v. State, 682 P.2d 1119 (Alaska 1984).

Right to instruction. — In prosecution for first-degree assault while it was only defendant's own testimony which supported his theory that he entered the party house in a non-aggressive manner with the sole intention of conversing with the victim, there was some evidence that defendant did not provoke a dispute with victim under circumstances that he knew or should have known would result in mortal combat, and therefore defendant was entitled to have his self-defense claim, weak as it may have been, properly determined by the jury. Brown v. State, 698 P.2d 671 (Alaska Ct. App. 1985).

In a prosecution for third-degree assault, defendant was not required to show that a robbery was actually imminent, but merely that he reasonably believed one to be imminent, and, having presented some evidence supporting all necessary elements of his claim of self-defense, it was error to refuse to instruct the jury on such claim and to preclude him from presenting evidence to support the claim. Lamont v. State, 934 P.2d 774 (Alaska Ct. App. 1997).

Sufficiency of evidence for instruction on self-defense. — See Paul v. State, 655 P.2d 772 (Alaska Ct. App. 1982); Weston v. State, 682 P.2d 1119 (Alaska 1984).

Error in specific instruction not cured by later general statements. — A specific instruction, based upon the choice of a few of the facts testified, but omitting the paramount facts as to the state of the defendant's mind, emotions, and inferable impulses is final in its declaration as to the absence of self-defense in the case, and the error in such a specific instruction is not cured by later general statements concerning the right of the jury to take into consideration the deceased victim's threats. De Groot v. United States, 78 F.2d 244 (9th Cir. 1935).

When instruction on no duty to retreat properly rejected. — Where a defendant who was a long-time hotel resident used deadly force against the hotel desk clerk in the hotel office, the trial court did not err in rejecting the defendant's proposed instruction that there is no duty to retreat before using deadly force if a person is attacked on premises which are leased or rented to him and he is not the initial aggressor. Stapleton v. State, 696 P.2d 180 (Alaska Ct. App. 1985).

When instructions on self-defense properly refused. — Instructions on self-defense are properly refused where there is nothing in the evidence to which they are applicable. Itow v. United States, 228 F. 25 (9th Cir. 1915).

Refusal to instruct held error. — Refusal to grant defendant's request for a fury instruction on the issue of self-defense was error where defendant satisfied the burden of producing "some evidence" that he had acted in self-defense. Paul v. State, 655 P.2d 772 (Alaska Ct. App. 1982).

Failure to instruct on self-defense was not harmless although the jury had rejected the affirmative defense of imperfect self-defense, since the burden of establishing imperfect self-defense rests on the defendant, and the standard of proof is a preponderance of the evidence, while the burden of disproving self-defense rests on the state and the standard of proof is beyond a reasonable doubt. Weston v. State, 682 P.2d 1119 (Alaska 1984).

Proper instruction. — An instruction was proper which expressly authorized the jury to acquit the defendant if they found that it appeared to his apprehension that he was actually in danger, and which authorized the jury to consider apparent actual danger, and the court immediately thereafter properly charged the jury on the subject of the appearance of danger to the defendant. Ball v. United States, 147 F. 32 (9th Cir. 1906).

The trial court did not err in instructing the jury on the matter of self-defense. Nielsen v. State, 623 P.2d 304 (Alaska 1981).

Improper instruction. — There is no ground for instructing the jury that the threats of a man of vicious character are to give any greater right to a defendant to kill in self-defense than would the threats of a virtuous man. Ball v. United States, 147 F. 32 (9th Cir. 1906).

Giving instruction misallocating burden of proof on self-defense amounted to plain error. Brown v. State, 698 P.2d 671 (Alaska Ct. App. 1985).

Instruction on mutual combat held misleading without qualification, see Huber v. United States, 258 F. 766 (9th Cir. 1919).

Applied in Kirby v. State, 649 P.2d 963 (Alaska Ct. App. 1982); Blackhurst v. State, 721 P.2d 645 (Alaska Ct. App. 1986); State v. Walker, 887 P.2d Ct. App. 1994); Rhames v. State, 907 P.2 Ct. App. 1995).

Quoted in Williamson v. State, 69 (Alaska Ct. App. 1984); Carson v. State, (Alaska Ct. App. 1987).

Collateral references. — Pleading se other justification in civil assault and ba 67 ALR2d 405.

Duty to retreat as condition of self-de one is attacked at his office, or place of employment, 41 ALR3d 584.

Sec. 11.81.340. Justification: is justified in using force upon ar believes it is necessary to defend person claiming defense of anoth would be justified under AS 11.8 self-defense. (§ 10 ch 166 SLA 19

Effect of amendments. — The 2006 an effective September 13, 2006, substituted "j in using" for "may use," "defense of anothe

N

Harm must be unlawful. — The tw defenses of defense of others and crime p require that the harm avoided by the charg unlawful. Cleveland v. Municipality of Ancho P.2d 1073 (Alaska 1981).

When the threatened harm emanates human source, an actor who violates th response to it can defend only on the gr duress, defense of others, or crime preventio land v. Municipality of Anchorage, 631 P. (Alaska 1981).

Reasonable belief that force is neces. Alaska Statutes 11.81.330 and this section plate a situation in which force is used by reasonably believes that force is necessary to the use of unlawful force against a third perso

Sec. 11.81.350. Justification: Us

(a) A person may use nondeadly forc reasonably believes it is necessary to the commission or attempted commis of property or services.

(b) A person may use deadly force reasonably believes it necessary to te the commission or attempted commis

(c) A person in possession or cont implied agent of that person, may us

(1) nondeadly force upon another believes it is necessary to terminate commission or attempted commission upon the premises;

Ct. App. 1986); State v. Walker, 887 P.2d 971 (Alaska Ct. App. 1994); Rhames v. State, 907 P.2d 21 (Alaska Ct. App. 1995).

Quoted in Williamson v. State, 692 P.2d 965 (Alaska Ct. App. 1984); Carson v. State, 736 P.2d 356 (Alaska Ct. App. 1987).

Stated in Houston v. State, 602 P.2d 784 (Alaska 1979).

Cited in Bell v. State, 658 P.2d 787 (Alaska Ct. App. 1983); David v. State, 698 P.2d 1233 (Alaska Ct. App. 1985); Palmer v. State, 770 P.2d 296 (Alaska Ct. App. 1989); Cameron v. State, 171 P.3d 1154 (Alaska 2007).

Collateral references. — Pleading self-defense or other justification in civil assault and battery action, 67 ALR2d 405.

Duty to retreat as condition of self-defense when one is attacked at his office, or place of business or employment, 41 ALR3d 584.

Modern status of rules as to burden and quantum of proof to show self-defense in homicide, 43 ALR3d 221.

Unintentional killing of or injury to third person during attempted self-defense, 55 ALR3d 620.

Withdrawal, after provocation of conflict, as reviving right of self-defense, 55 ALR3d 1000.

Sec. 11.81.340. Justification: Use of force in defense of a third person. A person is justified in using force upon another when and to the extent the person reasonably believes it is necessary to defend a third person when, under the circumstances as the person claiming defense of another reasonably believes them to be, the third person would be justified under AS 11.81.330 or 11.81.335 in using that degree of force for self-defense. (§ 10 ch 166 SLA 1978; am § 4 ch 68 SLA 2006)

Effect of amendments. — The 2006 amendment, effective September 13, 2006, substituted "is justified in using" for "may use," "defense of another" for "the defense of justification," and "self-defense" for "self defense."

NOTES TO DECISIONS

Harm must be unlawful. — The two related defenses of defense of others and crime prevention require that the harm avoided by the charged act be unlawful. Cleveland v. Municipality of Anchorage, 631 P.2d 1073 (Alaska 1981).

When the threatened harm emanates from a human source, an actor who violates the law in response to it can defend only on the grounds of duress, defense of others, or crime prevention. Cleveland v. Municipality of Anchorage, 631 P.2d 1073 (Alaska 1981).

Reasonable belief that force is necessary. — Alaska Statutes 11.81.330 and this section contemplate a situation in which force is used by one who reasonably believes that force is necessary to prevent the use of unlawful force against a third person. Thus, the defense is composed of an objective element, i.e., a reasonable belief that force is necessary and a subjective element, i.e., an actual belief that force is necessary. David v. State, 698 P.2d 1233 (Alaska Ct. App. 1985).

Right to instruction on defense. — In prosecution for fourth-degree assault, since there was evidence from which the jury could infer that defendant believed he had to kick his uncle to prevent harm to his daughter, and that this belief was reasonable, he was entitled to an instruction on defense of a third person as justification for his conduct. David v. State, 698 P.2d 1233 (Alaska Ct. App. 1985).

Cited in Bell v. State, 658 P.2d 787 (Alaska Ct. App. 1983).

Sec. 11.81.350. Justification: Use of force in defense of property and premises. (a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damaging of property or services.

(b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building.

(c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use

(1) nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of criminal trespass in any degree upon the premises:

(2) has escaped or is attempting to escape from custody while in possession of a firearm on or about the person; or

(3) may otherwise endanger life or inflict serious physical injury unless arrested without delay.

(b) The use of force in making an arrest or stop is not justified under this section unless the peace officer reasonably believes the arrest or stop is lawful.

(c) Nothing in this section prohibits or restricts a peace officer in preparing to use or threatening to use a dangerous instrument. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Subjecting felon to possibility of summary execution. — It is only in situations articulated in this section that a felon should be subjected to the possibility of summary execution. State v. Sundberg, 611 P.2d 44 (Alaska 1980).

Level of force must be objectively reasonable. — Regardless of whether the individual officer actually believed that his use of force was reasonable, and regardless of the reasonableness of that belief, the officer is not privileged to use an objectively unreasonable level of force in making an arrest. Samaniego v. City of Kodiak, 2 P.3d 78 (Alaska 2000).

This section and AS 12.25.070 are only general statutes which set out when deadly force is appropriate, with the latter indicating only that a police officer making an arrest may not use any restraint that is not necessary and proper for the arrest or detention of a person; however, such statutes cannot purport to give notice to officers that specific actions taken in specific circumstances may or may not be reasonable for immunity purposes. Sheldon v. City of Ambler, 178 P.3d 459 (Alaska 2008).

On a claim of excessive force, the court erred in applying an immunity analysis, driven by the officers' subjective beliefs as to the reasonableness of the force used. Samaniego v. City of Kodiak, 2 P.3d 78 (Alaska 2000).

Criteria for resolving issues under former law. — The criteria embodied in this section should be looked to as the relevant standards to be applied by Alaska's courts in resolving issues which might still arise under the "necessary and proper means" phraseology of former AS 12.25.080, which provided that "[i]f a person being arrested either flees or forcibly resists after notice of intention to make the arrest, the peace officer may use all the necessary and proper means to effect the arrest." State v. Sundberg, 611 P.2d 44 (Alaska 1980).

Lawful stops and custodial arrest distinguished. — See Howard v. State, 664 P.2d 603 (Alaska Ct. App. 1983).

Drawn guns and handcuffing do not necessarily turn a stop into an arrest. Howard v. State, 664 P.2d 603 (Alaska Ct. App. 1983).

Threats with nightstick. — Where the evidence establishes, at best, that the officer threatened defendant with the nightstick but never struck him with it and he consistently characterized the officer's conduct with the stick as menacing, and never intimated that the officer actually attempted to strike him there was insufficient evidence that the officer's threats with the nightstick amounted to a prohibited use of "deadly force." Carson v. State, 736 P.2d 356 (Alaska Ct. App. 1987).

Immunity standard for police officers clarified. — After clarifying the standard for qualified immunity to emphasize that the question was whether an officer reasonably believed that his actions were lawful, the court found that a police officer was not on notice under this section, AS 12.25.070, or through case law or regulation, that a bear hug and a take down were excessive uses of force when applied to an intoxicated and assaultive arrestee, and the officer was entitled to immunity. Sheldon v. City of Ambler, 178 P.3d 459 (Alaska 2008).

Unresolved factual questions prevented dismissal of excessive force claim. — Dismissal of arrestee's excessive force claim could not have been affirmed based subdivision (a)(2) because there were unresolved factual questions that prevented an appellate court from concluding that use of deadly force was reasonably necessary to accomplish the stated objectives because issue preclusive effect could not have been given to a federal district court's factual findings at a sentencing hearing for illegal possession of a firearm. Maness v. Daily, 184 P.3d 1 (Alaska 2008).

Applied in Brown v. Anchorage, 680 P.2d 100 (Alaska Ct. App. 1984).

Quoted in Sun v. State, 830 P.2d 772 (Alaska 1992).

Cited in Samaniego v. City of Kodiak, 2 P.3d 78 (Alaska 2000).

Collateral references. — Right of peace officer to use deadly force in attempting to arrest fleeing felon, 83 ALR3d 174.

Peace officer's civil liability for death or personal injuries caused by intentional force in arresting misdemeanant, 83 ALR3d 238.

When does police officer's use of force during arrest become so excessive as to constitute violation of constitutional rights, imposing liability under Federal Civil Rights Act of 1871 (42 USCS § 1983), 60 ALR Fed. 204.

Sec. 11.81.380. Justification: Use of force by private person assisting an arrest or terminating an escape. (a) Except as provided in (b) of this section, a person who has been directed by another who that person reasonably believes to be a peace officer to assist in making an arrest or terminating or preventing an escape may use

nondeadly force when and to the extent the person reasonably believes it necessary to carry out the peace officer's direction. A person may use deadly force under this section only when the person reasonably believes it necessary to carry out the peace officer's direction to use deadly force.

(b) The use of force under (a) of this section is not justified if the person believes that the peace officer is not justified in using that degree of force under the circumstances. (§ 10 ch 166 SLA 1978)

Sec. 11.81.390. Use of force by a private person in making arrest or terminating an escape. In addition to using force justified under other sections of this chapter, a person, acting as a private person, may use nondeadly force to make the arrest or terminate the escape or attempted escape from custody of a person who the private person reasonably believes has committed a misdemeanor in the private person's presence or a felony when and to the extent the private person reasonably believes it necessary to make that arrest or terminate that escape or attempted escape from custody. A private person may use deadly force under this section only when and to the extent the private person reasonably believes the use of deadly force is necessary to make the arrest or terminate the escape or attempted escape from custody of another who the private person reasonably believes

(1) has committed or attempted to commit a felony which involved the use of force against a person; or

(2) has escaped or is attempting to escape from custody while in possession of a firearm on or about the person. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Instructions. — A jury should have been instructed that a private person may use such means as may be necessary and proper to effect the arrest of an actual felon, including deadly force in a charge stemming from a shooting of one believed by a private citizen to have committed a crime. Grant v. State, 631 P.2d 1338 (Alaska 1981).

Cited in Walsh v. State, 758 P.2d 124 (Alaska Ct. App. 1988).

Collateral references. — Private person's authority, in making arrest for felony, to shoot or kill alleged felon, 32 ALR3d 1078.

Sec. 11.81.400. Justification: Use of force in resisting or interfering with arrest. (a) A person may not use force to resist personal arrest or interfere with the arrest of another by a peace officer who is known by the person, or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful, unless

(1) the force used by the peace officer exceeds that allowed under AS 11.81.370;

(2) *[Repealed, § 1 ch 63 SLA 1982.]*

(b) The use of force justified under this section in resisting arrest or interfering with the arrest of another may not exceed the use of force justified under AS 11.81.330 or 11.81.335.

(c) *[Repealed, § 1 ch 63 SLA 1982.]*

(d) *[Repealed, § 1 ch 63 SLA 1982.]* (§ 10 ch 166 SLA 1978; am § 26 ch 102 SLA 1980; am § 1 ch 63 SLA 1982)

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

As to when person sought to be defend himself against the arrest notes to AS 11.81.335, Notes to Decisi

Investigatory stops. — AS 11.8 restricts the right to use non-deadly f unlawful arrest, also applies to inves therefore, defendant was not permitte officer who had reasonable suspicio question him about an assault at H

Collateral references. — What c structing or resisting an officer, in t actual force, 44 ALR3d 1018.

Sec. 11.81.410. Justificatio force justified under other sectio correctional facility may, if aut Corrections, use nondeadly force necessary and appropriate to m

(b) Except as provided in (c) correctional facility or a peace off the time of an escape from the f guard or peace officer reasonal attempted escape of a prisoner f

(c) The use of deadly force und officer knows that the prisoner w a charge of a misdemeanor and do in which event only nondeadly fo

Revisor's notes. — Under § 48, E.O. ment of Corrections" was substituted for "

Applied in LeFever v. State, 877 P.2d 1 Ct. App. 1994).

Sec. 11.81.420. Justification: tent with AS 11.81.320 — 11.81.41 is justified when it is required or a order.

(b) The justification afforded by

(1) the person reasonably believe judgment, or order of a court of com process, notwithstanding lack of ju

(2) the person reasonably believe peace officer in the performance of exceeded the officer's authority. (§

N

Forcibly resisting court order to sei ers. — A person is not entitled to use force the taking of property by law enforcement pursuant to a court order. Jurco v. State, 825 Alaska Ct. App. 1992).

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 80, dated 2-9-11
bill # / subject — public hearing date

This bill is a common sense response to someone who is threatening you or your family's life. Why should a lawful gun owner who is carrying a firearm have a duty to retreat? It makes no sense to run and hide (when you are carrying a firearm) if your life is being threatened.

Please support this common sense bill.

Regards,
Cliff

Signed: Cliff Stone
Testifier

self
Representing (optional)

319 Rogers Rd Kenai, AK 99611
Address

(907) 283-7020
Phone number

Sarah Munson

From: Karen [ksak51@yahoo.com]
Sent: Tuesday, February 08, 2011 5:12 PM
To: Carl Gatto; Sarah Munson; Beth Schneider
Subject: Fwd: Alaska: House Judiciary Committee to Hear No-Duty-to-Retreat Legislation

~~#8~~ e-mails.
22

Begin forwarded message:

From: "NRA ILA Alerts" <admin@nramedia.org>
Date: February 8, 2011 3:01:57 PM AKST
To: KSAK51@yahoo.com
Subject: Alaska: House Judiciary Committee to Hear No-Duty-to-Retreat Legislation

Alaska: House Judiciary Committee to Hear No-Duty-to-Retreat Legislation

Contact the committee today!

The House Judiciary Committee will hear House Bill 80 tomorrow, February 9, at 1:00 p.m.

Introduced by state Representative Mark Neuman (R-15), HB 80 would remove the duty-to-retreat in Alaska. Under this bill, Alaskans would have the right to use force, including deadly force, for self-defense anywhere they have a right to be.

Please contact members of the House Judiciary Committee TODAY and respectfully urge them to support HB 80. Contact information for this committee can be found below. **Most importantly, there needs to be a strong public record of support in the House Judiciary Committee hearing on HB 80. You can help provide this support by visiting your local Legislative Information Office tomorrow to participate in the hearing and testify in favor of this bill.** A list of offices and contact information can be found here.

House Judiciary Committee

Representative Carl Gatto (R-13), Chairman
465-3743

NRAILA.
Write Yo
Represent
Write The
Get Involved
Register To
Contribu
Follow NR

Representative_Carl_Gatto@legis.state.ak.us

Representative Steve Thompson (R-10), Vice Chairman
465-3004
Representative_Steve_Thompson@legis.state.ak.us

Representative Wes Keller (R-14)
465-2186
Representative_Wes_Keller@legis.state.ak.us

Representative Bob Lynn (R-31)
465-4931
Representative_Bob_Lynn@legis.state.ak.us

Representative Lance Pruitt (R-21)
465-3438
Representative_Lance_Pruitt@legis.state.ak.us

Representative Max Gruenberg (D-20)
465-4940
Representative_Max_Gruenberg@legis.state.ak.us

Representative Lindsey Holmes (D-26)
465-4919
Representative_Lindsey_Holmes@legis.state.ak.us

Representative Chenault (R-34)
465-3779
Representative_Mike_Chenault@legis.state.ak.us

Sarah Munson

From: Karen Sawyer
Sent: Wednesday, February 09, 2011 8:34 AM
To: Sarah Munson
Subject: FW: Support HB 80

-----Original Message-----
From: Cheri Weed [mailto:akkid78@hotmail.com]
Sent: Wednesday, February 09, 2011 8:24 AM
To: Rep. Carl Gatto
Subject: Support HB 80

Dear Representative,

I would like to urge you to support House Bill 80. It concerns me that I am limited in my right to defend myself when the use of "deadly force"
becomes necessary.

I am a new mother with a five month old baby boy. Having to take a baby with me everywhere I go has made me much more vulnerable than I ever used to be! This makes me much more concerned about defending myself if the situation ever calls for it.

Being able to defend myself with "deadly force" is a choice I hope I never have to make but if I do I certainly hope the law will be on my side.

Sincerely,
Cheri Weed
907-488-0450

Sarah Munson

From: Dennis Jackson [drjackson48@hotmail.com]
Sent: Tuesday, February 08, 2011 4:26 PM
To: Rep. Carl Gatto
Subject: Duty to Retreat

Sir:

Thank you for your service in the legislature.

I am writing to urge you to vote for and continue to push for passage of this Bill. The right to defend oneself is the basic of rights in the Natural Law. The Natural Law has been citied as the basis for our jurisprudence since the first English settlers. The great commentator on the English Common Law Sir William Blackstone commented that the foundation of the right to bear arms in defense of oneself was the true right of a free person. Indeed the right goes back to the field at Runnymead England when John was forced to sign the Magna Carta. It is an embedded inherent right of survival and the foundation of the rights of a free people.

Nothing is so intimate as the right to repel an attacker. The old saying when you have only seconds the police are minutes away is so very true. Many would argue that we need to retreat to preserve life but I say anyone who puts their own life in peril and has assumed the risk by committing the crime is at fault. We know that the police would not retreat, why would anyone ask it of a citizen, have we erected an elite group that exercise a greater right than the citizen had before the formation of government? Indeed the right has been passed to the police for the orderly execution of justice but it was never given away in its entirety.

The example of violence along our southern boarder is an example of the citizens need to be able to defend themselves. Violence is not just localized in the south nor is it exclusive of the boarder. The example of the rampage against police in recent weeks is proof of this. Last year an officer was shot in Anchorage while doing reports in his cruiser, and not long after a trooper was shot while on patrol. This occurred just shortly after 4 officers in Lakewood, Washington were gunned down while they sat in a coffee stop. The plain truth is that lawlessness is very real and very dangerous. But this law that creates a duty to pause may be the pause that ends a lawful law abiding citizen's life. Too often it is a criminal that crys foul, why is it then that we should create another impediment by allowing a criminal to do so again. The law in its present state shifts the burden from the criminal to the victim, how utterly unreasonable can that possibly be? It is an old concept that if you run from a vicious animal you will encourage the attack. Whoever would by violence do harm to another has already proved their viciousness. Are we then to be encumbered by the doubt as to whether we will be judged to have acted prematurely? Are we to be victims before we are able to suppress a violent attack? Are we encumbered by the thought that we may be held liable for the acts of another? It goes beyond the pale of being reasonable.

Imagine a lone individual minding their business in a local store when a group of gang members enter and begin to accost the individual. Imagine then one of the assailants draws a weapon and in a threatening manner approaches the individual and begins an attack. If the defender draws a weapon and defends in a correct manner of self defense he has no witnesses. Do you suppose the gang member's friends would speak the truth?? Has this happened, on a daily basis? You have to but peruse the news papers, the internet or watch TV to find such events throughout the country.

I trust sir that you will do the right thing.

Dennis Jackson Fairbanks, Alaska

Sarah Munson

From: Karen Sawyer
Sent: Tuesday, February 08, 2011 5:03 PM
To: Sarah Munson
Subject: FW: HB-80 Supprot

Follow Up Flag: Follow up
Flag Status: Flagged

From: Kevin McCarthy [mailto:northpolegallery@yahoo.com]
Sent: Tuesday, February 08, 2011 3:47 PM
To: Rep. Carl Gatto
Subject: HB-80 Supprot

Hello!

My name is B. Kevin McCarthy and I am on the City of North Pole's City Council.

I would like to urge you to consider passing HB-80, a bill that would allow all Alaskans to protect themselves. As a retired US Coast Guard Chief and long time concealed firearm permit holder - Alaskans should be allow to protect family, friends, and themselves.

Thank you very much!

B. Kevin McCarthy
1051 Refinery Loop Rd
North Pole, Alaska 99705

Sarah Munson

From: Brandon Erickson [christianguy_95@yahoo.com]
Sent: Tuesday, February 08, 2011 3:29 PM
To: Rep. Carl Gatto
Subject: Support of HB 80

Sir,

I'm writing to encourage you to support HB 80. I am an Alaskan and have lived here since my birth 33 years ago except for the years that I served as an infantryman in the US Army.

For me, one of the most important rights that I have as an American, is my right to defend both my life and the lives of those around me. Most of the time that I am not at work, I carry a concealed handgun. I have taken courses and training in the laws surrounding when I can use my weapon to defend the mine and other's lives...and just as importantly, when not to use my weapon. I also shoot regularly as I believe that as someone who carries a weapon, I have a responsibility to be as prepared as possible in the event that I have to use it.

Taking another's life is something that I pray that I never have to do. But should I find myself in a situation where I am confronted by an attacker who is armed with either a weapon or a knife, turning my back to that attacker both presents a danger to myself as well as shifting responsibility for stopping an attack to someone else who may not be able to either defend themselves or flee. I may be able to run away safely, but that attacker will still be free to go after other people. Removing the requirement to flee, would enable me to help deter future attacks on others by either presenting my weapon and holding the attacker for the police, or God forbid, remove the threat myself.

Too often in today's society, we turn a blind eye and ignore what we don't want to see. Too often we flee away from an attacker rather than confront and overcome them. If I am in a position to stop a threat to either myself or others, I don't want to have to worry about my actions being reviewed in the comfort of a courtroom and then having others decide whether I may have been able to flee or not.

I thank you for your time and again, please allow Alaskans to defend themselves.

Respectfully,

Brandon Erickson

Sarah Munson

From: Christopher Nugent [cnugentak@gmail.com]
Sent: Tuesday, February 08, 2011 3:19 PM
To: Rep. Carl Gatto
Subject: HB 80

Dear Representative Carl Gatto
I respectfully urge you to support HB 80, No-Duty-to-Retreat Legislation.
Christopher Nugent, Maj, USAF (Ret)
Wasilla, AK

Sarah Munson

From: Mike Reeves [michaelr311@gmail.com]
Sent: Tuesday, February 08, 2011 3:19 PM
To: Rep. Carl Gatto
Subject: support HB 80

As crimes against persons are ever growing in Alaska we need this law to send the message that we are armed, and detour the perpetrator from infringing on our civil rights to be a safe, rather armed or for the unarmed, this will help send a message that Alaskans want to protect themselves and property from unwanted harm. No man or women should have to retreat or fear prosecution for self-defense of life and property.

I urge you to support this bill, it may save someone you know or love

Mike Reeves
Wasilla, Alaska

Sarah Munson

From: Vincent L. McCutcheon [gra8wulf@gmail.com]
Sent: Tuesday, February 08, 2011 3:17 PM
To: Rep. Carl Gatto
Subject: Support HB80

I respectfully request that you support HB 80.

My Very Best Regards,

Vincent L McCutcheon
P.O. Box 467
Willow AK, 99688

Phone: (907) 495.4076
Cell: (907) 232.1058
Gra8wulf@gmail.com

Sarah Munson

From: RICHARD KOWALSKI [richkow777@hotmail.com]
Sent: Tuesday, February 08, 2011 3:47 PM
To: Rep. Carl Gatto
Subject: HB 80...

Sir, my name is Richard Kowalski. I live in Hoonah and I would be very grateful if you would support HB 80. I'm sure you've heard "when danger threatens the police are only minutes away". No one should be forced by law to run from your own home if confronted by a common criminal.

Thank you,
Capt. R.C. Kowalski
Merchant Ser. Ret.

Sarah Munson

From: bullitt [bullitt@acsalaska.net]
Sent: Tuesday, February 08, 2011 3:46 PM
To: Rep. Carl Gatto
Subject: HB80

As a tax paying citizen of the United States of America and a resident of Alaska for 39 years I respectfully request that you support HB 80 when it comes to vote. Sincerely, Craig Rowell

Sarah Munson

From: Douglas Hart [dsimshart@gmail.com]
Sent: Tuesday, February 08, 2011 3:41 PM
To: Rep. Carl Gatto
Subject: House Bill 80 - "No-Duty-to-Retreat" Legislation

I am FULLY in favor of ANY legislation that provides for my ability to defend myself and my family from preditors. Please consider this Bill FULLY and CAREFULLY.

Doug Hart
Douglas S. Hart, Sr
Master Sergeant, US Army (Retired)

"ΜΟΛΩΝ ΛΑΒΕ"

Sarah Munson

From: Jerry Books [book@ptialaska.net]
Sent: Tuesday, February 08, 2011 4:10 PM
To: Rep. Carl Gatto

we support house bill 80.....
we should have the right to defend ourselves.
i urge your support.
jerry books
soldotna

Sarah Munson

From: Bob Esper [besper@mail.com]
Sent: Tuesday, February 08, 2011 3:57 PM
To: Rep. Carl Gatto
Subject: HB 80

I respectfully urge you to support HB 80

Sarah Munson

From: Tim Gobbi [gobiwon@acsalaska.net]
Sent: Tuesday, February 08, 2011 3:57 PM
To: Rep. Carl Gatto
Subject: HB 80

I respectfully urge you to support HB 80

Thank you
Tim Gobbi

Sarah Munson

From: Doreen [tdlow@acsalaska.net]
Sent: Tuesday, February 08, 2011 4:24 PM
To: Rep. Carl Gatto
Subject: Hb-80.....YES!!!

I urge you to support HB-80.....
Thank You,
Thomas T. Low
Fairbanks, Alaska

Sarah Munson

From: Karen Sawyer
Sent: Tuesday, February 08, 2011 5:01 PM
To: Sarah Munson
Subject: FW: A MESSAGE IN SUPPORT OF HOUSE BILL 80

Follow Up Flag: Follow up
Flag Status: Flagged

From: Eleanor Murphy [mailto:joelie10@hotmail.com]
Sent: Tuesday, February 08, 2011 4:30 PM
To: Rep. Carl Gatto
Subject: A MESSAGE IN SUPPORT OF HOUSE BILL 80

Representative Carl Gatto
Chairman, House Judiciary Committee

Mr Chairman:

"Introduced by state Representative Mark Neuman (R-15), **HB 80 would remove the duty-to-retreat in Alaska**. Under this bill, Alaskans would have the right to use force, including deadly force, for self-defense anywhere they have a right to be."

I fully support the intent of House Bill 80, as stated above. It is time to give more reasonable options to law abiding Alaskans. This is one of them, and it is long overdue. I hope this Bill will get the strong support it deserves from the House Judiciary Committee. I would like to see this Bill become law in Alaska.

Alaskans should not be at the mercy of the lawless, nor should we have to "read law on whether we have a right to self defense" in order to decide if we are "allowed" to protect ourselves and our loved ones. Let the lawless reap the consequences of their actions in a more timely manner for a change.

My thanks to Representative Neuman for introducing this Bill for the benefit of all law abiding Alaskans. I hope it will become law soon.

I have exercised my right to vote in every election since I became eligible, after arriving in Alaska in 1977. I AM a serious Alaskan.

Eleanor G Murphy
PO Box 594
Homer, AK 99603

907-299-0972 cell phone

Sarah Munson

From: Rep. Mark Neuman
Sent: Tuesday, February 08, 2011 4:54 PM
To: Sarah Munson
Subject: FW: HB 80

Follow Up Flag: Follow up
Flag Status: Flagged

-----Original Message-----
From: Christopher Nugent [mailto:cnugentak@gmail.com]
Sent: Tuesday, February 08, 2011 3:24 PM
To: Rep. Mark Neuman
Subject: HB 80

Dear Representative Mark Neuman
Thank you for introducing the No-Duty-to-Retreat Legislation. I fully support you on this very important piece of legislation.
Christopher Nugent, Maj, USAF (Ret)
Wasilla, AK

Sarah Munson

From: Karen Sawyer
Sent: Tuesday, February 08, 2011 3:10 PM
To: Sarah Munson
Subject: FW: I support House Bill 80 and U should too!

Follow Up Flag: Follow up
Flag Status: Flagged

From: C6288439@aol.com [mailto:C6288439@aol.com]
Sent: Tuesday, February 08, 2011 3:08 PM
To: Rep. Carl Gatto
Subject: I support House Bill 80 and U should too!

Hello my name is Chuck Cook I strongly support House Bill 80. Vote for "the people" and remember we balance budget and cut spending in AK and Fed's
Thank U
907-953-2560

Sarah Munson

From: Karen Sawyer
Sent: Tuesday, February 08, 2011 5:00 PM
To: Sarah Munson
Subject: FW: House bill 80

Follow Up Flag: Follow up
Flag Status: Flagged

From: Ken Logan [mailto:scotty_in_alaska@yahoo.com]
Sent: Tuesday, February 08, 2011 4:59 PM
To: Rep. Carl Gatto
Subject: House bill 80

Please support this legislation.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
REPRESENTATIVE CARL GATTO, CHAIR

COMMITTEE MEMBERS:
REP. STEVE THOMPSON, VICE CHAIR
REP. BOB LYNN
REP. WES KELLER
REP. LANCE PRUITT
REP. LINDSEY HOLMES
REP. MAX GRUENBERG

STATE CAPITOL BUILDING, RM 120
JUNEAU, AK 99801-1182
PHONE: 907-465-4990
FAX: 907-465-2381
HOUSE_JUDICIARY@LEGIS.STATE.AK.US

DATE: February 14, 2011

TO: House Finance Committee members

FROM: Representative Carl Gatto
House Judiciary Chair

RE: Fiscal Note HB080-LAW-CRIM-02-09-11

The House Judiciary Committee has reservations about the fiscal note from the Criminal Division of the Department of Law on HB 80 "Self Defense." Several members have concerns about the Department's claim that this legislation will produce a sufficient amount of new cases to merit two additional full-time attorneys. The committee also questions whether $450,000 annually is an appropriate estimate for these two positions.

We respectfully request that the House Finance Committee exercise due care and consideration of this fiscal note.