

HB

24

<TARGET><BILL>HB 24</BILL><SUBJECT>HB
24</SUBJECT><COMM>HJUD28</COMM></TARGET>

Amendment

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: HB 24

Page 2, line 3, following "any":

Insert "other"

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 30, 2013

Dear Representatives Wes Keller

Subject: HB 24 "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 24, please consider scheduling this legislation on or after Wednesday, February 6th 2013 for the House Judiciary Committee. I look forward to discussing HB 24 with members of the Alaska House of Representative.

Included are the following:

- Letter of Request
- Sponsor statement.
- Current version of the bill.

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

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Mark Neuman".

Representative Mark Neuman

ALASKA STATE LEGISLATURE

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Legislative Budget & Audit Committee

Chair:

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



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Fax: (907) 373-4745

Representative Mark Neuman

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

Sponsor Statement

Alaska Statutes already recognize that we have a right to use deadly force to protect our family, person, and property. HB 24 further clarifies that right exists not only in our home but also in any place that we have a right to be.

This legislation clarifies the individual's right to stand their ground and not second guess the consequence of protecting their family or self.

HB 24 strengthens the legal recognition of a basic human right to defend oneself by sending a message to the Judiciary and Law Enforcement that it is the criminal who has the duty to retreat.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 24 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB024-LAW-CRIM-02-05-13
Title: SELF DEFENSE
Sponsor: ** NEUMAN, ISAACSON
Requester: (H) Judiciary

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Loretta Withington, Division Operations Manager
Division: Administrative Services Division
Approved By: Michael C. Geraghty, Attorney General
Department of Law

Phone: (907)465-5427
Date: 02/05/2013 12:00 AM
Date: 02/05/13

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB 24

Analysis

House Bill 24 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. In all cases where deadly force is used and the person does not retreat, and it is not in their home or workplace, it is more likely the case will go to trial.

The fiscal note is zero because it is anticipated the department will prosecute these cases with existing resources.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 24 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB024-DOA-PDA-2-01-13
Title: SELF DEFENSE
Sponsor: ** NEUMAN, ISAACSON
Requester: House Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By:	Quinlan Steiner	Phone:	(907)334-4414
Division	Public Defender Agency	Date:	02/01/2013 12:52 PM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	02/01/13
	Department of Administration		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB024

Analysis

This bill amends the statute governing self-defense and eliminates the duty to retreat if the person claiming self-defense is "in any place where the person has a right to be." The question of whether a person has a duty to retreat is closely tied to the question of whether a person is justified in using deadly force.

Eliminating the duty in certain circumstances, therefore, is not likely to have a fiscal impact on the cases charged by the state. Accordingly, the Agency submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 24 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB024-DOA-OPA-2-01-13
Title: SELF DEFENSE
Sponsor: ** NEUMAN, ISAACSON
Requester: House Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By:	Richard Allen, Director	Phone:	(907)269-3504
Division	Office of Public Advocacy	Date:	02/01/2013 10:00 PM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	02/01/13
	Department of Administration		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB024

Analysis

This bill amends the statute governing self-defense and eliminates the duty to retreat if the person claiming self-defense is "in any place where the person has a right to be." The question of whether a person has a duty to retreat is closely tied to the question of whether a person is justified in using deadly force.

Eliminating the duty in certain circumstances, therefore, is not likely to have a fiscal impact on the cases charged by the state. Accordingly, the Office of Public Advocacy submits a zero impact fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 24 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB024-DPS-DET-02-01-13
Title: SELF DEFENSE
Sponsor: ** NEUMAN, ISAACSON
Requester: House Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Lieutenant Rodney Dial	Phone:	(907)254-1284
Division	Alaska State Troopers	Date:	02/01/2013 10:15 AM
Approved By:	Joseph A. Masters, Commissioner	Date:	02/01/13
	Department of Public Safety		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB024

Analysis

This proposed legislation would amend AS 11.81.335 - Justification: Use of deadly force in defense of self - by adding a new paragraph (5) under subsection (b) which provides exceptions to a person's duty to leave the area. The new paragraph (5) provides that there is no duty to retreat if the person is in any place the person has a right to be.

Passage of this bill will have no fiscal impact to the Division of Alaska State Troopers.

Sec. 11.81.320. Justification: Necessity.

(a) Conduct which would otherwise be an offense is justified by reason of necessity to the extent permitted by common law when

(1) neither this title nor any other statute defining the offense provides exemptions or defenses dealing with the justification of necessity in the specific situation involved; and

(2) a legislative intent to exclude the justification of necessity does not otherwise plainly appear.

(b) The justification specified in (a) of this section is an affirmative defense.

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 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.

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 defenses to murder, see AS 11.41.115.

NOTES TO DECISIONS

Annotator's notes. - Many of the cases cited in the notes below were decided under former AS 11.15.100.

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 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

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))

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).

Where person claiming justification attacked first. - Defendant's assault on the victim was not justified where there was no violence or threat of violence until defendant cut the victim in the face with a knife, whereupon defendant threatened to kill the victim twice. A reasonable person would not conclude that any force, even nondeadly force, was necessary to defend the attacker against the victim. *Silvera v. State*, 244 P.3d 1138 (Alaska Ct. App. 2010).

Reasonable belief that force is necessary. - This section and AS 11.81.330 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).

Defendant was not entitled to an instruction on defense of a third person (defendant's eight-month old daughter) under this section because there was no evidence that defendant believed his daughter faced imminent harm or threat of harm. The judge focused on the appropriate question: whether the child would have been justified in throwing the victim down to defend herself, not on whether she was physically capable of doing so. *Leu v. State*, 251 P.3d 363 (Alaska Ct. App. 2011).

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).

violence fatality review team are closed to the public and are not subject to the provisions of AS 44.62.310 — 44.62.319 (Open Meetings Act).

(e) The determinations, conclusions, and recommendations of a domestic violence fatality review team or its members are not admissible in a civil or criminal proceeding. A member may not be compelled to disclose a determination, conclusion, recommendation, discussion, or thought process through discovery or testimony in a civil or criminal proceeding. Records and information collected by the team are not subject to discovery or subpoena in connection with a civil or criminal proceeding.

(f) Notwithstanding (e) of this section, an employee of a state or a municipal agency may testify in a civil or criminal proceeding concerning cases reviewed by a domestic violence fatality review team even though the agency's records were reviewed by a team and formed the basis of that employee's testimony and the team's report.

(g) A person who serves on a domestic violence fatality review team is not liable for damages or other relief in an action brought by reason of the performance of a duty, function, or activity of the team. (§ 1 ch 19 SLA 2004)

Revisor's notes. — In 2010, "AS 44.62.310 — "AS 44.62.310 and 44.62.312" in accordance with 44.62.319 (Open Meetings Act)" was substituted for § 29(1), ch. 58, SLA 2010.

Article 6. General Provisions.

Section

990. Definitions

Sec. 18.66.900. Definitions. [Repealed, § 72 ch 64 SLA 1996.]

Sec. 18.66.990. Definitions. In this chapter,

(1) "council" means the Council on Domestic Violence and Sexual Assault;

(2) "crisis intervention and prevention program" means a community program that provides information, education, counseling, and referral services to individuals experiencing personal crisis related to domestic violence or sexual assault and to individuals in personal or professional transition, excluding correctional half-way houses, outpatient mental health programs, and drug or alcohol rehabilitation programs;

(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

(A) a crime against the person under AS 11.41;

(B) burglary under AS 11.46.300 — 11.46.310;

(C) criminal trespass under AS 11.46.320 — 11.46.330;

(D) arson or criminally negligent burning under AS 11.46.400 — 11.46.430;

(E) criminal mischief under AS 11.46.475 — 11.46.486;

(F) terrorist threatening under AS 11.56.807 or 11.56.810;

(G) violating a protective order under AS 11.56.740(a)(1); or

(H) harassment under AS 11.61.120(a)(2) — (4);

(4) "domestic violence program" means a program that provides services to the victims of domestic violence, their families, or perpetrators of domestic violence;



(5) "household member" includes

(A) adults or minors who are current or former spouses;

(B) adults or minors who live together or who have lived together;

(C) adults or minors who are dating or who have dated;

(D) adults or minors who are engaged in or who have engaged in a sexual relationship;

(E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;

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- (F) adults or minors who are related or formerly related by marriage;
- (G) persons who have a child of the relationship; and
- (H) minor children of a person in a relationship that is described in (A) — (G) of this paragraph;
- (6) "judicial day" means any Monday through Friday that is not a state holiday and on which the court clerk's offices are officially opened to receive legal documents for filing;
- (7) "local community entity" means a city or borough or other political subdivision of the state, a nonprofit organization, or a combination of these;
- (8) "petitioner" includes a person on whose behalf an emergency protective order has been requested under AS 18.66.110(b);
- (9) "sexual assault" means a crime specified in AS 11.41.410 — 11.41.450;
- (10) "sexual assault program" means a program that provides services to the victims of sexual assault, their families, or perpetrators of sexual assault. (§ 33 ch 64 SLA 1996; am § 75 ch 21 SLA 2000; am § 20 ch 92 SLA 2002; am § 6 ch 87 SLA 2003)

NOTES TO DECISIONS

with

Degrees of consanguinity. — Where a domestic violence restraining order was issued, based in part on a finding that the defendant and victim were related within the fourth degree of consanguinity, the judge properly vacated the order upon the defendant proving that the relationship was within the fifth degree, not the statutorily prescribed fourth. *Jacko v. State*, 981 P.2d 1075 (Alaska Ct. App. 1999).

Relationship by marriage. — When an ex-husband broke the windows in his former mother-in-law's car, this was a crime involving domestic violence because his former mother-in-law had been related to him by marriage. *McComas v. Kirn*, 105 P.3d 1130 (Alaska 2005).

Terms broadly defined. — Sentencing judge may require the defendant to attend a batterer's intervention program, but the definitions of "crime involving domestic violence" and "domestic violence" are quite broad under this section and AS 12.55.185(4), encompassing many situations that have nothing to do with an assault by one domestic partner against another, making a different intervention program more appropriate. *Cooper v. Dist. Court*, 133 P.3d 692 (Alaska Ct. App. 2006).

There was sufficient evidence that defendant and the victim had dated to satisfy the definition of "household member" where the victim testified that she met defendant in 2004 or 2005 and that they dated "on and off" for three or four years. *O'Donnell v. State*, — P.3d — (Alaska Ct. App. June 29, 2011), (memorandum opinion).

"Dating." — Use of the term "dating" in the definition of a household member in the statute does not result in a definition that is so conflicting or confused that it cannot be given meaning in the adjudication process. *O'Donnell v. State*, — P.3d — (Alaska Ct. App. June 29, 2011), (memorandum opinion).

Domestic violence. — Although the real source of potential prejudice was not the ultimate validity or invalidity of a restraining order, but the fact that the order was termed a "domestic violence" restraining order, where the judge gave a curative instruction to the jury, none of the testimony at the trial suggested that the defendant had engaged in physical violence, and there were few references to domestic violence in the course of the trial, the judge did not abuse his discretion when he precluded the defendant from presenting evidence that the restraining order was

invalidated subsequent to the violation forming the basis for the charge. *Jacko v. State*, 981 P.2d 1075 (Alaska Ct. App. 1999).

The legislature consistently uses the phrase "crimes involving domestic violence" in a context which indicates that the reference is to a criminal act, not a criminal conviction. *State v. Bingaman*, 991 P.2d 227 (Alaska Ct. App. 1999).

Evidence of "other crimes involving domestic violence by the defendant" does not require proof of a conviction to be admissible. *State v. Bingaman*, 991 P.2d 227 (Alaska Ct. App. 1999).

"Domestic violence." — Trial court properly admitted evidence of a prior incident of domestic violence where it tended to show the husband's propensity to act violently toward the wife when provoked. The court had no duty to state the specific character trait of the husband which the prior incident was admitted to illustrate. *Bennett v. Municipality of Anchorage*, 205 P.3d 1113 (Alaska Ct. App. 2009).

The terms "dating" and "sexual relationship" are not irretrievably ambiguous; while reasonable people might disagree in particular cases about whether a couple's series of social engagements constituted dating or whether their relationship was a sexual one, the fact that there may be individual cases that are difficult to classify does not mean that the terms "dating" and "sexual relationship" have no objectively ascertainable meaning. *Lampley v. State*, — P.3d — (Alaska Ct. App. Apr. 1, 2009), (memorandum opinion).

Stalking of ex-wife constitutes domestic violence. — When an ex-husband sent threatening communications to his ex-wife, this was stalking; these acts by the ex-husband were sufficient support for the issuance of a protective order because stalking in the second degree is a crime involving domestic violence when committed against a former spouse. *McComas v. Kirn*, 105 P.3d 1130 (Alaska 2005).

Preservation for review. — Defendant failed to preserve an argument that a self-defense instruction did not encompass his theory of the case because defendant failed to object on that ground, as required by Alaska R. Crim. P. 30(a). *Leu v. State*, 251 P.3d 363 (Alaska Ct. App. 2011).

Verbal confrontation held possible assault. — Verbal confrontation in a parking lot between persons reported as being a "couple" in a 911 call constituted a

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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

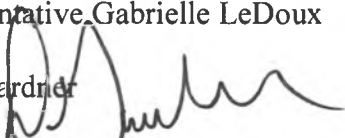
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 8, 2013

SUBJECT: HB 24; Self Defense in Any Place A Person Has a Right to Be
(Work Order No. 28-LS0142\A)

TO: Representative Gabrielle LeDoux

FROM: Doug Gardner
Director 

You called and asked if, in light of the amendments HB 24 proposes to AS 11.81.335(b), existing portions of the statute (AS 11.81.335(b)(1) and (b)(3)) are still necessary or whether it is advisable for the legislature to amend the statute to remove them.

AS 11.81.335 addresses justification: use of deadly force in defense of self. AS 11.81.335(b), the part of the statute that provides exceptions for the duty to retreat, currently provides:

- (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.

Proposed HB 24 amends AS 11.81.335(b) by adding the following fifth exception to the list of exceptions to a person's duty to retreat: "**or, (5) in any place where the person has a right to be.**" Your question is, with the addition of proposed paragraph (b)(5), are existing paragraphs (b)(1) and (b)(3) subsumed by (b)(5)?

Representative Gabrielle LeDoux

February 8, 2013

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This is a difficult question to answer. It seems to me that the better argument is to leave paragraphs (b)(1) and (b)(3) in the statute as written, if paragraph (b)(5) (new amended language) is added to the statute. My reason for this conclusion is that, if the purpose of the bill is to provide the maximum amount of certainty and protection for a person using deadly force, the retention of accepted exceptions to the duty to retreat better achieves that objective than the deletion of those provisions and their replacement with language that a court has not yet been called upon to interpret. Of course, others might disagree.

DDG:ljw

13-072.ljw

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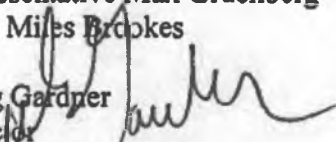
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MEMORANDUM

February 8, 2013

SUBJECT: Definition of Household Member in AS 11.81.335(b)

TO: Representative Max Gruenberg
Attn: Miles Brookes

FROM: Doug Gardner
Director 

We discussed HB 24, which proposes amendments to AS 11.81.335(b). After our discussion, there was one remaining issue you asked me to review. The question you asked, as I understood it, was whether the term "household" in AS 11.81.335(b)(4),¹ would be defined as broadly as provided in AS 18.66.990(5):

- (5) "household member" includes
- (A) adults or minors who are current or former spouses;
 - (B) adults or minors who live together or who have lived together;
 - (C) adults or minors who are dating or who have dated;
 - (D) adults or minors who are engaged in or who have engaged in a sexual relationship;
 - (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
 - (F) adults or minors who are related or formerly related by marriage;
 - (G) persons who have a child of the relationship; and
 - (H) minor children of a person in a relationship that is described in (A) - (G) of this paragraph;

As you know and as we discussed, AS 11.81.335(b)(4)(no duty to retreat) does not define "household," unlike AS 11.81.350(e)(2), which provides for the definition in AS 18.66.990 for justification and the use of force in defense of property and premises.

¹ AS 11.81.335(b)(4) provides:

(b) A person may not use deadly force . . . except there is not duty to leave the area if the person is

...

(4) protecting a child or a member of the person's household.

Representative Max Gruenberg
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In my opinion, based on the legislature's decision to provide a definition of "household" for purposes of AS 11.81.350 but not for AS 11.81.335(b)(4), a court instructing a jury at trial would not utilize the definition of "household" in AS 18.66.990 for purposes of AS 11.81.335(b)(4).

In the time available prior to the House Judiciary Committee meeting at 1:00 p.m. today, I was unable to find any legislative history regarding the term "household" in AS 11.81.335(b)(4), nor was I able to find any Alaska case discussing the term as used in AS 11.81.335(b)(4), which I note was added by amendment to sec. 3, ch. 68, SLA 2006. Given the absence of a specific definition in AS 11.81.335, a court would likely provide the jury with a dictionary definition of "household" and instruct the jury that whether a person was a member of the household of the person using deadly force is a question of fact for them to decide. A definition of household is provided in Merriam Webster's Online Dictionary as: "[t]hose who dwell under the same roof and compose a family; *also* : a social unit composed of those living together in the same dwelling."

DDG:plm
13-025.plm