

HB

335

<TARGET><BILL>HB 335</BILL><SUBJECT>HB
335</SUBJECT><COMM>HJUD28</COMM></TARGET>

ALASKA STATE LEGISLATURE

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REPRESENTATIVE GABRIELLE LEDOUX
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Sponsor Statement

HB 335

"An Act relating to the regulation of firearms and knives by the University of Alaska."

House Bill 335 obliges the Board of Regents of the University of Alaska to adhere to Alaskan law and permit law-abiding citizens to carry concealed firearms on campus. Current University policy forbids this legally protected activity and as such is at odds with the State Constitution.

The right to keep and bear arms as codified in Article 1 of the Alaska State Constitution is not to be encumbered or infringed by the State or any subdivision of the State and by statute all power to regulate firearms and knives is exclusively reserved to the State. As of now, no state law or regulation forbids law-abiding citizens from enjoying their right to keep and bear arms on University of Alaska campuses.

As established by the Alaska State Constitution the University of Alaska is the official state university and its board of regents is appointed by the governor and subject to confirmation by the State Legislature. As such, the University of Alaska is a political subdivision of the State and the regents are required to enact policy which conforms to State law.

In 1995 the University contravened State law, administering a policy which prohibited the carrying of concealed weapons on campus.

The record shows that unstable and violent criminals consistently target unarmed populations and allowing such a situation at our own state universities would be abrogating our responsibilities. Honest Alaskans should not lose that most basic of rights, self-defense, merely because they attend college.

I urge you to support House Bill 355.

28-LS1514/N
Gardner
3/6/14

CS FOR HOUSE BILL NO. 335()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LEDOUX, Millett, Lynn, Foster

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the regulation of firearms and knives by the University of Alaska."**

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

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **FINDINGS AND INTENT.** The legislature finds that the individual right to keep and
6 bear arms is a constitutionally protected right under art. I, sec. 19, Constitution of the State of
7 Alaska, and may not be abridged by the Board of Regents of the University of Alaska. The
8 legislature reserves to the state the authority to regulate firearms, except as specifically
9 provided in AS 14.40.173.

10 * **Sec. 2.** AS 14.40 is amended by adding a new section to read:

11 **Sec. 14.40.173. Regulation of firearms and knives.** (a) The authority to
12 regulate firearms and knives is reserved to the state, and, except as specifically
13 provided by statute, the board of regents may not enact or enforce a policy regulating
14 the possession, ownership, use, carrying, registration, storage, or transportation of
15 firearms or knives.

1 (b) The board of regents may adopt and enforce policies identical to state law
2 restricting the discharge of firearms on any portion of university land where there is a
3 reasonable likelihood that people, domestic animals, or property will be jeopardized;
4 policies adopted or enforced under this paragraph may not abridge the right of the
5 individual guaranteed by art. I, sec. 19, Constitution of the State of Alaska, to bear
6 arms in defense of self or others.

7 (c) In this section, "firearms" includes firearms, or any other element relating
8 to firearms or parts of the firearm including ammunition and reloading components.

LEGAL SERVICES

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

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FAX (907) 465-2029
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 21, 2014

SUBJECT: Firearms on University of Alaska Campuses
(Work Order No. 28-LS1514\A)

TO: Representative Gabrielle LeDoux
Attn: Thomas Brown

FROM: Doug Gardner
Director

You asked for a house companion bill based on SB 176 (28-LS1385\U), applying the provisions of AS 29.35.145 regarding the regulation of firearms and knives to the Board of Regents of the University of Alaska (University). The drafting request you submitted raised a question regarding the autonomy of the University under art. VII, sec. 2 of the Constitution of the State of Alaska.

The University is a constitutionally-created independent corporation, with a great deal of autonomy. While it is not entirely clear, the legislature may be able to restrict the University from adopting or enforcing policies concerning firearms and knives as the legislature has done with municipalities, so it is likely that the bill you requested is constitutional.

Article VII, sec. 2, Constitution of the State of Alaska, provides the University with legal title to its property:

SECTION 2. State University. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

The University's Board of Regents has the care, control, and management of the lands and property deeded to it.^{1, 2} It may adopt rules for the governance of the University.³

¹ In *State v. University of Alaska*, 624 P.2d 807, 814 - 15 (Alaska 1981), the Alaska Supreme Court acknowledged that the University held title to the land, but also that the legislature could dispose of land under certain circumstances.

² AS 14.40.170(a)(4).

Representative Gabrielle LeDoux
February 21, 2014
Page 2

However, since the University must administer its property "according to law" the bill is arguably within the legislature's authority. Please review the bill draft and make sure that the changes I made to adapt the language of AS 29.35.145 to the University satisfies your request.

DDG:Ind
14-078.Ind

Enclosure

¹ AS 14.40.070(b)(1).

Alaska Statutes and Regulations

Concerning Alaska Concealed Handgun Permits



Alaska Concealed Handgun Permit Program
Department of Public Safety, Division of Statewide Services
5700 East Tudor Road ♦ Anchorage, AK 99507 ♦ Phone (907) 269-0392
<http://www.dps.state.ak.us/statewide/PermitsLicensing/concealedhandguns.aspx>

This document is a compilation of Alaska statutes and regulations pertaining to concealed handgun permits and is current as of 09/20/2010. To be certain of the current version of the statutes and regulations, please refer to the official printed version of the statutes and regulations. These are available at all Alaska Court System law libraries and many public libraries.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

Table of Contents

Alaska Residency	1
AS 01.10.055. Residency	1
Concealed Handgun Permit Statutes	1
AS 18.65.700. Permit to carry a concealed handgun.....	1
AS 18.65.705. Qualifications to obtain a permit.....	3
AS 18.65.710. Application for permit to carry a concealed handgun.....	4
AS 18.65.715. Demonstration of competence with handguns.....	5
AS 18.65.720. Fees.....	5
AS 18.65.725. Permit renewal.....	6
AS 18.65.730. Replacement of permit.....	7
AS 18.65.735. Suspension of permit.....	7
AS 18.65.740. Revocation of permit; appeal.....	7
AS 18.65.745. No liability for issuance of permit or for training.....	8
AS 18.65.748. Permit holders from other jurisdictions considered Alaska permit holders.....	8
AS 18.65.755. Places where permittee may not possess a concealed handgun.....	9
AS 18.65.760. Misuse of a permit.....	9
AS 18.65.765. Responsibilities of the permittee.....	10
AS 18.65.770. Permits, applications, and other materials not public records.....	10
AS 18.65.775. Regulations; reciprocity agreements.....	10
AS 18.65.778. Municipal preemption.....	10
AS 18.65.790. Definitions.....	11
Concealed Handgun Permit Regulations	12
13 AAC 30.010. Issuance of new permits; replacement of a permit	12
13 AAC 30.020. Permit renewals	12

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

13 AAC 30.030. Permit upgrades	12
13 AAC 30.040. Fees	12
13 AAC 30.050. Processing of applications; appeals.....	13
13 AAC 30.060. Suspension and revocation of permits; appeals	15
13 AAC 30.070. Approval of handgun courses.....	19
13 AAC 30.080. Revocation of handgun course certificate of approval	22
13 AAC 30.085. Establishing eligibility as an honorably retired peace officer.....	23
13 AAC 30.090. Proof of handgun training	24
13 AAC 30.100. Photographs and fingerprints	25
13 AAC 30.110. Notification of places where concealed handguns may not be carried.....	25
13 AAC 30.120. Form of permits.....	26
13 AAC 30.130. Qualifications regarding safe handling of a handgun.....	26
13 AAC 30.140. Application forms	27
13 AAC 30.150. Reciprocity.....	28
13 AAC 30.800. Confidentiality	28
13 AAC 30.900. Definitions	28
Misconduct Involving Weapons.....	31
AS 11.61.190. Misconduct involving weapons in the first degree.....	31
AS 11.61.195. Misconduct involving weapons in the second degree.....	31
AS 11.61.200. Misconduct involving weapons in the third degree.	32
AS 11.61.210. Misconduct involving weapons in the fourth degree.....	35
AS 11.61.220. Misconduct involving weapons in the fifth degree.	37

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

Alaska Residency

AS 01.10.055. Residency.

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

Concealed Handgun Permit Statutes

AS 18.65.700. Permit to carry a concealed handgun.

(a) The department shall issue a permit to carry a concealed handgun to a person who

(1) applies in person at an office of the Alaska State Troopers;

(2) qualifies under AS 18.65.705;

(3) submits on an application form approved by the department the information required under AS 18.65.705 and 18.65.710; the department shall post on the department's website the state laws and regulations relating to concealed handguns, which must include a concise summary of where, when, and by whom a handgun can be carried under state and federal law and shall, on request, mail a copy of the regulations and summary to an applicant or permittee;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(4) submits one complete set of fingerprints in the format approved by the department that is of sufficient quality so that the fingerprints may be processed; the fingerprints must be taken by a person, group, or agency approved by the department; the department shall maintain a list of persons, groups, or agencies approved to take fingerprints and shall provide the list to the public upon request; the fingerprints shall be used to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400;

(5) submits evidence of successful completion of a handgun course as provided in AS 18.65.715;

(6) provides one frontal view color photograph of the person taken within the preceding 30 days that includes the head and shoulders of the person and is of a size specified by the department;

(7) shows a valid Alaska driver's license or identification card at the time of application;

(8) does not suffer a physical infirmity that prevents the safe handling of a handgun; and

(9) pays the application fee required by AS 18.65.720.

(b) The department shall either approve or reject an application for a permit to carry a concealed handgun under (a) of this section within 30 days of receipt of the application. If the department has not received necessary fingerprint eligibility information from another agency by the end of this 30-day period, and the applicant is otherwise eligible, the department shall issue a conditional permit to the applicant subject to immediate revocation under the procedure provided in AS 18.65.740(a) - (c) if the fingerprint information subsequently discloses that the applicant is ineligible for a permit. The department shall notify the applicant in writing of the reason for a rejection.

(c) A person whose application is rejected under this section may appeal the rejection decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 - 44.62.570.

(d) A permit issued under (a) of this section expires on the person's birthday in the fifth year following issuance of the permit. The department may adjust the length of an initial permit so that a permit is not issued for a period of more than five years.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(e) The department shall issue a permit to carry a concealed handgun to an honorably retired peace officer of this state who applies for a concealed handgun permit within one year of the officer's retirement and who satisfies the requirements of this subsection. To qualify for a permit under this subsection, an honorably retired peace officer must satisfy (a)(1) - (3) and (6) - (9) of this section and, unless the honorably retired peace officer has qualified with a handgun within five years of the officer's retirement, must also satisfy (a)(5) of this section. The department may not require an honorably retired peace officer applying under this subsection to comply with (a)(4) of this section to receive a permit. The department shall issue the permit without submitting information to or receiving permit eligibility information from the Federal Bureau of Investigation. The department may adopt regulations to define an "honorably retired peace officer" and the evidence that must be submitted to establish eligibility under this subsection.

AS 18.65.705. Qualifications to obtain a permit.

A person is qualified to receive and hold a permit to carry a concealed handgun if the person

(1) is 21 years of age or older;

(2) is eligible to own or possess a handgun under the laws of this state and under federal law;

(3) is a resident of the state and has been for the 90 days immediately preceding the application for a permit;

(4) has not been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the six years immediately preceding the application;

(5) is not now in and has not in the three years immediately preceding the application been ordered by a court to complete an alcohol or substance abuse treatment program; and

(6) has successfully completed a handgun course as provided in AS 18.65.715.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

AS 18.65.710. Application for permit to carry a concealed handgun.

(a) The application for a permit to carry a concealed handgun must contain the following information:

(1) the applicant's name, physical residence, mailing address, place and date of birth, physical description, including height, weight, race, hair color, and eye color, Alaska driver's license or identification card number, and the city and state of each place the applicant has resided in the five years immediately preceding the application;

(2) a statement that the applicant qualifies under AS 18.65.705;

(3) a statement that the applicant has been furnished with a copy of the state laws and regulations relating to concealed handguns, has read those sections, and understands them;

(4) a statement that the applicant desires a permit to carry a concealed handgun for a lawful purpose, which may include self-defense;

(5) a statement by the applicant that all statements, answers, and attachments to the application are true and complete;

(6) a conspicuous warning that an applicant who supplies a false statement, answer, or document in connection with the application that the applicant does not believe to be true may be prosecuted for unsworn falsification in the second degree and, if found guilty, may be punished for violation of a class A misdemeanor, and that, in such cases, the permit shall be revoked and the applicant may be barred from any further application for a permit; and

(7) a statement that the applicant understands that a permit eligibility investigation will be conducted as a part of the application process, that this may involve computerized records searches, and that the applicant authorizes the investigation.

(b) An application under (a) of this section may not inquire of an applicant about, or require the submission of, information beyond that described in that subsection. As part of an application under (a) of this section, the department may not inquire of an applicant as to any firearms owned by the applicant.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

AS 18.65.715. Demonstration of competence with handguns.

(a) An applicant for a permit to carry a concealed handgun shall provide a certificate of successful completion of a handgun course that is approved by the department. The handgun course must have been completed within the 12 months immediately preceding the application. The department shall approve a handgun course, including the personal protection course offered by the National Rifle Association, if the course tests the applicant's

(1) knowledge of Alaska law relating to firearms and the use of deadly force;

(2) familiarity with the basic concepts of the safe and responsible use of handguns;

(3) knowledge of self-defense principles; and

(4) physical competence with a handgun.

(b) *[Repealed, Sec. 20 ch 1 SLA 1998].*

(c) The department may not require a certificate of competence submitted under this section to contain any specifically identifying information, including make, model, or serial number, of a handgun with which an applicant or permittee has demonstrated competence.

(d) The department shall maintain a list of approved courses and shall provide the list to the public upon request.

AS 18.65.720. Fees.

The department shall charge a nonrefundable fee for the processing of the application for an initial issuance of a permit, renewal of a permit, or replacement of a permit. The fees shall be set by regulation and must be based on the actual costs incurred by the department. However, the fee for the processing of an application and initial issuance of a permit may not exceed \$99 and the fee for renewal of a permit or replacement of a permit may not exceed \$30.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

AS 18.65.725. Permit renewal.

(a) A permittee shall apply for renewal of a permit to carry a concealed handgun within 90 days before the expiration of the permit, on a renewal form approved by the department. The renewal form must include

(1) any change in the information originally submitted under AS 18.65.710;

(2) a statement that the person remains qualified to receive and hold a permit to carry a concealed handgun under AS 18.65.705;

(3) one frontal view photograph of the person taken within the preceding 30 days that includes the head and shoulders of the person and is of a size specified by the department;

(4) the renewal fee required under AS 18.65.720; and

(5) the warning listed in AS 18.65.710(a)(6).

(b) *[Repealed, Sec. 15 ch 94 SLA 2000].*

(c) A renewal of a permit to carry a concealed handgun submitted on or after the expiration date is subject to a late fee of \$25. The department may not accept a renewal for a permit that is submitted more than 60 days after the expiration date of the permit. Nothing in this subsection prohibits the holder of an expired permit from applying for a new permit.

(d) A renewal form under (a) of this section may not inquire of a permittee about, or require the submission of, information beyond that described in (a) of this section.

(e) Notwithstanding AS 18.65.705(3), a permittee does not become ineligible to hold a permit, and need not return or surrender a permit, when ceasing to be a resident of the state, and the department may not require a permittee to return or surrender a permit because a permittee ceases to be a resident of the state. However, a permittee may not renew a permit if the permittee is not a resident of the state at the time of renewal.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(f) The department shall mail the permittee a notice of expiration by first class mail at least 90 days before expiration of the permit. [See delayed amendment note]¹

AS 18.65.730. Replacement of permit.

The department may replace a permit that the permittee certifies under oath has been lost, stolen, or destroyed, provided the permittee applies in person and

(1) provides one frontal view photograph of the permittee taken within the preceding 30 days that includes the head and shoulders and is of a size specified by the department;

(2) pays the replacement fee required under AS 18.65.720.

AS 18.65.735. Suspension of permit.

(a) The department shall immediately suspend a permit to carry a concealed handgun if a permittee becomes ineligible to hold a permit under AS 18.65.705.

(b) A person whose permit is suspended under this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) The department shall retain a permit suspended under this section until the permit is revoked or returned to the permittee.

AS 18.65.740. Revocation of permit; appeal.

(a) A permit to carry a concealed handgun shall be immediately revoked by the department when the permittee

(1) becomes disqualified to receive and hold a permit under AS 18.65.705;

(2) is convicted of two class A misdemeanors of this state or similar laws of another jurisdiction within a six-year period if at least one of the convictions occurs after the application;

¹ Under sec. 6, ch. 24, SLA 2010, subsection (f) takes effect July 1, 2012.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(3) knowingly supplied a false or fraudulent answer, statement, or document, or made a material misstatement or omission, in connection with an application for a permit or renewal or replacement of a permit.

(b) A person whose permit is revoked under (a) of this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) A person whose permit is revoked under this section may appeal the revocation decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 - 44.62.570.

(d) A person whose permit is revoked may not apply for a permit until at least five years after the revocation.

AS 18.65.745. No liability for issuance of permit or for training.

(a) The state, and its officers and employees, are not liable by virtue of having issued a permit to carry a concealed handgun for damage or harm caused by the permittee.

(b) A person who provides firearm training to a person who receives a permit under AS 18.65.700 - 18.65.790 is not liable for damage or harm caused by the permittee.

AS 18.65.748. Permit holders from other jurisdictions considered Alaska permit holders.

A person holding a valid permit to carry a concealed handgun from another state or a political subdivision of another state is a permittee under AS 18.65.700(b) for purposes of AS 18.65.755 - 18.65.765.

AS 18.65.750. Possession and display of permit. [Repealed, Sec. 7 ch 62 SLA 2003].

Repealed or Renumbered

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

AS 18.65.755. Places where permittee may not possess a concealed handgun.

(a) A permittee may not possess a concealed handgun

(1) *[Repealed, Sec. 7 ch 62 SLA 2003].*

(2) anywhere a person is prohibited from possessing a handgun under state or federal law.

(b) *[Repealed, Sec. 20 ch 1 SLA 1998].*

(c) In addition to any other penalty provided by law, a person who violates this section is guilty of a class B misdemeanor.

AS 18.65.760. Misuse of a permit.

(a) The holder of a permit issued under AS 18.65.700 - 18.65.790 may not

(1) alter the permit;

(2) allow another person to use the permit;

(3) possess or display a suspended or revoked permit; or

(4) represent or display an expired permit as if the permit were valid, unless the holder has submitted a complete, timely renewal form under AS 18.65.725 and the renewal process has been delayed due to circumstances not under the control of the applicant; this paragraph does not require a holder to return or surrender a permit upon its expiration, nor may the department require a holder to return or surrender a permit upon its expiration.

(b) A person who violates (a)(1) - (3) of this section is guilty of a class A misdemeanor.

(c) A person who violates (a)(4) of this section is guilty of a violation and upon conviction may be punished by a fine of not more than \$100.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

AS 18.65.765. Responsibilities of the permittee.

(a) The holder of a permit issued under AS 18.65.700 - 18.65.790

(1) shall notify the department of a change in the permittee's address within 30 days;

(2) shall immediately report a lost, stolen, or illegible permit to the department;

(3) shall immediately notify the department if the holder is no longer qualified to hold a permit under AS 18.65.705.

(4) *[Repealed, Sec. 15 ch 94 SLA 2000].*

(b) A person who violates this section is guilty of a violation and upon conviction may be punished by a fine of not more than \$100.

AS 18.65.770. Permits, applications, and other materials not public records.

Applications, permits, and renewals are not public records under AS 40.25.110 - 40.25.125 and may only be used for law enforcement purposes.

AS 18.65.775. Regulations; reciprocity agreements.

(a) The department shall adopt regulations to implement AS 18.65.700 - 18.65.790. This section does not delegate to the department the authority to regulate or restrict the issuing of permits beyond those provisions contained in AS 18.65.700 - 18.65.790.

(b) The department shall enter into reciprocity agreements with other states that have the legal authority to enter into such agreements so that permittees may carry concealed handguns in those other states.

AS 18.65.778. Municipal preemption.

A municipality may not restrict the carrying of a concealed handgun by permit under AS 18.65.700 - 18.65.790.

AS 18.65.780. Prohibition of possession of concealed handguns. [Repealed, Sec. 15 ch 94 SLA 2000].

Repealed or Renumbered

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

AS 18.65.785. Procedure for local option elections. [Repealed, Sec. 15 ch 94 SLA 2000].

Repealed or Renumbered

AS 18.65.790. Definitions.

In AS 18.65.700 - 18.65.790,

- (1) "commissioner" means the commissioner of public safety;
- (2) "competence" means the ability to place in a life size silhouette target
 - (A) seven out of 10 shots at seven yards;
 - (B) six out of 10 shots at 15 yards;
- (3) "concealed handgun" means a firearm, that is a pistol or a revolver, and that is covered or enclosed in any manner so that an observer cannot determine that it is a handgun without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it; however, "concealed handgun" does not include a shotgun, rifle, or a prohibited weapon as defined under AS 11.61.200;
- (4) "department" means the Department of Public Safety;
- (5) "permit" means a permit to carry a concealed handgun issued under AS 18.65.700 - 18.65.790.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

Concealed Handgun Permit Regulations

13 AAC 30.010. Issuance of new permits; replacement of a permit

(a) Repealed 5/8/2002.

(b) A permit issued under AS 18.65.700 - 18.65.790 authorizes the permittee to carry a concealed handgun as provided by AS 11 and AS 18.65.700 - 18.65.790.

(c) The department will replace a permit if the permittee appears in person at an office of the Alaska State Troopers to certify under oath, on a form provided by the department, that the permit has been lost, stolen, or destroyed and to provide the items required by AS 18.65.730 . Replacement of a permit under this subsection does not change the expiration date of that permit.

(d) The department will issue a permit to carry a concealed handgun to an honorably retired peace officer of this state who complies with the requirements of AS 18.65.700(e) and

(1) repealed 5/8/2002;

(2) repealed 5/8/2002;

(3) provides the department with proof of

(A) handgun training as specified in 13 AAC 30.090(a); or

(B) handgun qualification as specified in 13 AAC 30.090(d).

Authority: AS 18.65.700 AS 18.65.775

13 AAC 30.020. Permit renewals

Repealed 5/8/2002.

13 AAC 30.030. Permit upgrades

Repealed 5/8/2002.

13 AAC 30.040. Fees

(a) Before processing an application for a permit, certificate, or other service under this chapter, the department will collect a nonrefundable fee as follows:

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(1) new permit application fee\$40 plus the fees required for fingerprint processing under 13 AAC 68.900, if applicable;

(2) permit renewal\$25;

(3) permit replacement\$25;

(4) repealed 5/8/2002;

(5) new permit application fee for an honorably retired peace officer \$40.

(b) The department will conduct a periodic review of the cost of administering the program under this chapter and may adjust the fees set out in (a) of this section after compliance with the AS 44.62 (Administrative Procedures Act).

Authority: AS 18.65.720 AS 18.65.775

13 AAC 30.050. Processing of applications; appeals

(a) Repealed 5/8/2002.

(b) An application for a

(1) new permit

(A) from a person who is not applying as an honorably retired peace officer under AS 18.65.700(e) is complete when the requirements of AS 18.65.700(a) and this chapter have been met;

(B) from a person who is applying as an honorably retired peace officer under AS 18.65.700(e) is complete when the requirements of AS 18.65.700(e), 13 AAC 30.085, and 13 AAC 30.090 have been met;

(2) replacement permit is complete when the requirements of AS 18.65.730 and 13 AAC 30.032 have been met;

(3) permit renewal is complete when the requirements of AS 18.65.725 have been met;

(4) repealed 5/8/2002;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(5) handgun course certificate of approval is complete when the requirements of 13 AAC 30.070 have been met.

(c) The office that received the application will promptly send it to the department's permits and licensing unit.

(d) The department's permits and licensing unit will request permit eligibility information from the Federal Bureau of Investigation, or another agency, that is necessary to make a determination concerning the application.

(e) Review of an application for a permit, certificate, or other service under this chapter will be discontinued if

(1) a fee check is returned by a financial institution as being without sufficient funds or is otherwise uncollectible;

(2) discrepancies or omissions are present in the application, or in documents submitted with the application, or the application or accompanying documents have not been completed correctly;

(3) fingerprints accompanying the application are not sufficiently readable for manual or computer use, or the information required to be submitted on fingerprint forms has not been completed correctly;

(4) the department determines that the application or a document submitted in connection with the application contains a false statement that the applicant does not believe to be true; or

(5) the department determines that the applicant is not otherwise qualified or entitled to obtain the permit, certificate, or other service requested.

(f) If review of an application is discontinued under (e) of this section, the department will mail to the applicant the department's written reasons for the discontinuance. The department will resume reviewing the application if, within 90 days after the date of the department's written notice that review has been discontinued, the applicant provides supplementary information to the department that resolves the reason for the discontinuance; and necessary supplementary information is described

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

in 13 AAC 30.130(a) if the discontinuance is related to the criteria under AS 18.65.700(a)(8). The department will reject the application if that information is not provided to the department within 90 days after the date of the department's written notice to the applicant that review has been discontinued.

(g) If after review of an application, the application is denied, the department will mail to the applicant a notice of denial containing written reasons for the denial. A person whose application has been denied may appeal to the commissioner for reversal of the decision. The appeal must be received in writing within 30 days after the date of the notice of denial, and must set out the reasons for the appeal. The decision of the commissioner or the commissioner's designee will be in writing and will be made within 45 days after receipt of the appeal.

(h) A person whose application has been rejected or denied under this section

(1) may not apply again for a period of five years if the rejection or denial was for the reason set out in (e)(4) of this section and the false statement related to a material matter;

(2) repealed 5/8/2002.

(i) The department shall issue a permit that states that the permit holder is "not nics exempt" if the permit holder's fingerprints have been rejected by the Federal Bureau of Investigation as not sufficiently readable for manual or computer use.

Authority: AS 18.65.710 AS 18.65.720 AS 18.65.775

13 AAC 30.060. Suspension and revocation of permits; appeals

(a) If the department suspends a permit under AS 18.65.735, the department immediately will mail or deliver a notice of the suspension to the permittee. The permittee is required by AS 18.65.735 to immediately surrender the permit to the nearest peace officer.

(b) A suspension of a permit under (a) of this section remains in effect until the permit is revoked or the permittee provides proof satisfactory to the department that the reason for suspension has been rectified.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(c) If the department revokes a permit under AS 18.65.740, the department immediately will mail or deliver a notice of the revocation to the permittee. The permittee is required by AS 18.65.740 to surrender the permit to the nearest peace officer.

(d) For purposes of revocation under AS 18.65.740, the date of conviction is the date sentence was imposed or imposition of sentence was suspended under AS 12.55.085 or a similar procedure in another jurisdiction.

(e) If a peace officer believes that a permit is subject to suspension or revocation under AS 18.65.735 or 18.65.740, the officer shall immediately notify the department's permits and licensing unit of the identity and location of the permittee and the grounds for suspension or revocation.

(f) A permittee who becomes subject to suspension or revocation under (a) or (c) of this section shall immediately notify the department and surrender the permit to the nearest peace officer.

(g) If, under 13 AAC 30.130(b), the department has reason to believe that a permittee suffers from a physical infirmity that may prevent the safe handling of a handgun, the department will mail or deliver to the permittee a notice that the department intends to revoke the permittee's permit because of the physical infirmity. After mailing or delivery of the notice, the following procedures apply:

(1) the permittee may submit to the department, within 30 days after the date of the notice, a written report by a physician, optometrist, or other competent medical authority, who can lawfully practice in this state, that, as determined from an examination within the six months before the date of the notice, the permittee does not suffer from the physical infirmity;

(2) if the permittee demonstrates to the department that circumstances beyond the permittee's control prevent the submission of the report within the 30 days, the department will extend the deadline for 15 days;

(3) if the necessary report is not received by the department by the deadline in (1) or (2) of this subsection, whichever is applicable, the permit is automatically revoked and the department will so notify the permittee;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(4) if the permittee submits a report by the deadline set in (1) or (2) of this subsection, but the department determines that the report does not substantiate that the permittee does not suffer from the physical infirmity, the department will mail or deliver to the permittee a notice that the permittee, within 30 days after the date of the notice under this paragraph, may submit another report to meet the requirements of (1) of this subsection;

(5) if a second report is necessary under (4) of this subsection but is not received by the department by the deadline set by that paragraph, the permit is automatically revoked and the department will so notify the permittee;

(6) if a permit is revoked under this subsection, the permittee, upon receipt of the revocation notice under (3) or (5) of this subsection, shall immediately surrender the permit to the nearest peace officer;

(7) if the department timely receives a report that meets the requirements of this subsection, the department will notify the permittee that the permit is not revoked;

(8) a permittee whose permit is revoked under this subsection may appeal the revocation under the procedures in (j) of this section.

(h) If, under 13 AAC 30.130(b), the department has reason to believe that a permittee is not able to safely or competently handle a handgun, the department will mail or deliver to the permittee a notice that the department intends to revoke the permittee's permit. After mailing or delivery of the notice, the following procedures apply:

(1) the permittee may submit to the department, within 30 days after the date of the notice, a certificate of completion from an approved handgun course verifying that the permittee has, no earlier than six months before the date of the notice, taken and successfully completed the part of the handgun course described in 13 AAC 30.070(a) (1)(A)(iv);

(2) if the permittee demonstrates to the department that circumstances beyond the permittee's control prevent the submission of the certificate of completion within the 30 days, the department will extend the deadline for 15 days;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(3) if the certificate of completion required by (1) of this subsection is not received by the department by the deadline in (1) or (2) of this subsection, whichever is applicable, the permit is automatically revoked and the department will so notify the permittee;

(4) if a permit is revoked under this subsection, the permittee, upon receipt of the revocation notice under (3) of this subsection, shall immediately surrender the permit to the nearest peace officer;

(5) if the department timely receives the certificate of completion required by (1) of this subsection, the department will notify the permittee that the permit is not revoked;

(6) a permittee whose permit is revoked under this subsection may appeal the revocation under the procedures in (j) of this section.

(i) A peace officer who receives a surrendered permit shall immediately

(1) notify the department's permits and licensing unit, identifying the permittee who surrendered the permit, and the date, time, and location the permit was surrendered; and

(2) send the surrendered permit to the department's permits and licensing unit.

(j) A person who has surrendered a permit because it has been revoked under this section may appeal to the commissioner for reversal of the revocation. The appeal must be received in writing within 30 days after the date of the notice of revocation, and must set out the reasons for the appeal. The decision of the commissioner or the commissioner's designee will be in writing and will be made within 45 calendar days after receipt of the appeal.

(k) A person whose permit is revoked

(1) under AS 18.65.740(a)(1) or (3) may not apply for a new permit under 13 AAC 30.010 sooner than five years following the date of the notice of revocation;

(2) under AS 18.65.740(a)(2) may not apply for a new permit under 13 AAC 30.010 until the person qualifies under AS 18.65.705(4).

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(l) A permit that is revoked under (g) or (h) of this section may be reinstated if the former permittee provides proof to the department that the reason for revocation has been rectified and complies with the requirements of AS 18.65.725 if the person applies for renewal no later than the 31st day after the original permit would have expired had it not been revoked. If the former permittee does not meet the deadline in this subsection for reinstatement of the permit, the former permittee may apply for a new permit under 13 AAC 30.010, and must provide proof to the department that the reason for revocation has been rectified.

Authority: AS 18.65.735 AS 18.65.740 AS 18.65.765 AS 18.65.775

13 AAC 30.070. Approval of handgun courses

(a) A person who or organization that wishes to provide a handgun course for the purposes of AS 18.65.715 shall apply to the department, on a form provided by the department, for approval of the course. After processing and review under 13 AAC 30.050, the department will approve the course and will issue a certificate of approval if

(1) the application contains sufficient curriculum and course information to show that

(A) the curriculum includes at least 12 hours of training in the use of handguns that instructs the student in

(i) knowledge of Alaska law relating to firearms and the use of deadly force, including instruction in statutes, administrative regulations, and case law;

(ii) the basic concepts of the safe and responsible use of handguns;

(iii) knowledge of self-defense principles; and

(iv) the physical handling, mechanics, carrying, transporting, storage, loading, and unloading of handguns, including a test of competence with a handgun;

(B) the instruction in the subjects listed in (A)(ii) - (A)(iv) of this paragraph will be provided by an instructor for whom information has been submitted to the department as provided in (3) of this subsection;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(C) the instruction in the subjects listed in (A)(i) of this paragraph will be provided by an attorney licensed to practice law in this state, or by a person with a valid certification as a police officer issued by the Alaska Police Standards Council;

(2) the application contains information sufficient to substantiate that the course will ensure that

(A) a student who has successfully completed instruction in the subjects listed in (1)(A) of this subsection will be provided with a certificate showing the course title, printed name and signature of the primary training instructor, the student's printed name, the student's Alaska driver's license or identification card number, the name of the organization conducting the instruction, the date of successful completion of the instruction, and a statement that the student has demonstrated physical competence with a handgun as required by AS 18.65.715; and

(B) upon request, the department will be

(i) allowed access to course facilities during times of instruction;

(ii) allowed access at reasonable times to all records related to the applicant's handgun course;

(iii) provided with documentation to confirm the attendance and completion records of a student who applies for a permit;

(iv) provided with other information needed to assess the course's qualification for purposes of AS 18.65.715;

(3) the application is accompanied by the following for each course instructor described in (1)(B) of this subsection:

(A) complete instructor information on a form provided by the department, signed by the instructor and the person signing the application under this section, and containing the information specified in (b) of this section;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(B) two sets of fingerprints, obtained as specified in 13 AAC 30.100(b), and the fee required by 13 AAC 68.900, unless two sets of the instructor's fingerprints have been submitted to the department, for purposes of this chapter, within the 12 months preceding the date of the application; and

(C) repealed 5/8/2002.

(b) A completed instructor information form required by (a)(3) of this section must

(1) show that the subject instructor is eligible to possess a firearm under the laws of this state and under federal law;

(2) state the subject instructor's Alaska driver's license number or identification card number; and

(3) have attached to it a copy of a certificate of training showing that

(A) the subject instructor has successfully completed a handgun instructor's training course recognized by the department under (d) of this section as providing adequate handgun instructor training; and

(B) the subject instructor's signed statement that the subject instructor remains current with the standards of that handgun instructor's training course.

(c) The instructor information form provided by the department and referred to in (a) and (b) of this section will contain the statement that a person signing the form

(1) understands that an investigation may be conducted regarding the information given on the form, including a search of computer records; and

(2) the person authorizes the investigation.

(d) The department will recognize a handgun instructor's training course as providing adequate handgun instruction training if the course provides students with instruction in

(1) how to instruct in the topics set out in (a)(1)(A) of this section;

(2) preparing a curriculum and course outline for a handgun training course;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(3) organizing and conducting a handgun training course;

(4) use of visual aids and techniques in student skill development; and

(5) proper testing techniques.

(e) An application for a certificate of approval for a handgun course must be signed by a person designated as the chief operating officer of the course. In addition to the penalty provided in AS 18.65.710(a)(6), a false statement made in an application, on a form, or in other information provided to the department under this section for the purposes of this chapter and AS 18.65.700 - 18.65.790 is punishable under AS 11.56.210.

(f) A person who or organization that has been issued a certificate of approval under this section shall notify the department's permits and licensing unit in writing if the person or organization is no longer providing instruction on an annual basis.

(g) As used in this section, "instruction" or "instructs" includes testing in the subject matter of the curriculum.

Authority: AS 18.65.715 AS 18.65.775

13 AAC 30.080. Revocation of handgun course certificate of approval

(a) Except as provided in (b) of this section, the department will immediately revoke a handgun course certificate of approval issued under 13 AAC 30.070, and will mail to the certificate holder a notice of the revocation, if the

(1) department has reason to believe that the handgun course no longer meets the requirements of 13 AAC 30.070(a) for approval of a handgun course; or

(2) certificate holder submitted an application under 13 AAC 30.070, or a document in connection with the application, that contained a

(A) false statement that the applicant does not believe to be true; or

(B) material misstatement or omission.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(b) If the department obtains information about an instructor of an approved handgun course that would result in denial of the handgun course's application for a certificate of approval if the application was being considered by the department, the department will immediately notify the chief operating officer of the handgun course that, in order to retain the course's certificate of approval, the instructor may not be allowed to continue providing instruction for purposes of AS 18.65.715. The course of instruction being provided by that instructor at the time of notice under this subsection will not satisfy the requirements of AS 18.65.700 - 18.65.790 and 13 AAC 30.010 - 13 AAC 30.900. If the department determines that the instructor is continuing to provide instruction for purposes of AS 18.65.715, the department will immediately revoke the handgun course's certificate of approval and will mail to the certificate holder a notice of revocation.

(c) The holder of a certificate of approval that is revoked under this section may appeal the revocation to the commissioner. The appeal must be received in writing within 30 days after the date of the notice of revocation, and must set out the reasons for the appeal. The decision of the commissioner or the commissioner's designee will be in writing and will be made within 45 calendar days after receipt of the appeal.

(d) The holder of a certificate of approval that is revoked under this section shall immediately surrender the certificate by sending it to the department's permits and licensing unit.

(e) A certificate of approval that is revoked under this section may be reinstated if the person or organization operating the handgun course (1) provides proof to the department that the reason for the revocation has been rectified; and (2) resubmits an application for a certificate of approval that meets the requirements of 13 AAC 30.070. However, a certificate of approval that was revoked for the reason set out in (a)(2) of this section may not be reinstated sooner than one year following the date of the notice of revocation under this section.

Authority: AS 18.65.715 AS 18.65.775

13 AAC 30.085. Establishing eligibility as an honorably retired peace officer

To establish eligibility as an "honorably retired peace officer of this state" for the purposes of AS 18.65.700(e), the applicant must provide

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(1) evidence satisfactory to the department to show

(A) employment as a peace officer with a law enforcement agency in this state

(i) for two or more years before terminating employment as a peace officer; and

(ii) within the one year before application for a permit under this chapter; and

(B) the person did not terminate employment as a peace officer in lieu of firing, suspension, or other involuntary separation or employee discipline; and

(2) repealed 5/8/2002.

Authority: AS 18.65.700 AS 18.65.775

13 AAC 30.090. Proof of handgun training

(a) Proof of handgun training for purposes of obtaining a new permit is established by providing to the department, at the time of the application, a copy of a certificate of successful completion of an approved handgun course; the certificate must contain the information required by 13 AAC 30.070(a)(2)(A) and must show that a course described in 13 AAC 30.070(a) has been completed within the 12 months immediately before submitting the application.

(b) Repealed 12/9/98.

(c) Repealed 12/9/98.

(d) An honorably retired peace officer making application under AS 18.65.700(e) desiring to satisfy the handgun qualification requirements for a permit by demonstrating that the applicant has qualified with a handgun within five years of the peace officer's termination of employment from the law enforcement agency must submit a notarized copy of the applicant's record of the handgun qualification and a copy of the law enforcement agency's handgun qualification policy along with the applicant's completed application. The record of handgun qualification must indicate that the applicant's score met or exceeded the minimum passing standard under the handgun qualification policy. For purposes of this subsection, "handgun qualification policy" means the standards by which a

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

person qualified to carry a handgun as part of the person's official duties as a peace officer for the law enforcement agency.

Authority: AS 18.65.715 AS 18.65.775

13 AAC 30.100. Photographs and fingerprints

(a) A photograph submitted under AS 18.65.700 - 18.65.790 and this chapter must be one frontal view that includes the head and shoulders, must be taken within the 30 days before submission, and must be of a size, color, and condition that will allow the photograph to be processed in the department's identification production equipment. Applications and other forms provided by the department under this chapter will contain detailed specifications for the photograph, necessary for processing.

(b) Fingerprints submitted under AS 18.65.700 - 18.65.790 and this chapter must be taken within the 90 days before submission on forms approved by the Federal Bureau of Investigation and in accordance with instructions on those forms. If the fingerprints submitted by an applicant are not sufficiently readable, the applicant must obtain another set at the applicant's expense. Fingerprints may be taken by (1) a law enforcement agency or state correctional facility; or (2) a person, not affiliated with a law enforcement agency or state correctional facility, who has received the department's written approval to take fingerprints. A list of persons or agencies approved to take fingerprints will be made available to the public.

(c) Repealed 5/8/2002.

Authority: AS 18.65.700 AS 18.65.725 AS 18.65.730 AS 18.65.775

13 AAC 30.110. Notification of places where concealed handguns may not be carried

(a) Repealed 5/8/2002.

(b) Nothing in this chapter or in AS 18.65.700 - 18.65.790 precludes a person from posting, to the extent allowed by law, a notice regarding the carrying of a concealed handgun.

Authority: AS 18.65.775

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

13 AAC 30.120. Form of permits

A permit will

(1) display a color photograph of the permittee;

(2) show the permittee's name, mailing and residence address, date of birth, and physical description including height, weight, race, hair color, and eye color;

(3) show the expiration date of the permit; and

(4) repealed 5/8/2002.

Authority: AS 18.65.775

13 AAC 30.130. Qualifications regarding safe handling of a handgun

(a) The department, under 13 AAC 30.050, will discontinue review of an application for a permit or permit renewal, if the department has reason to believe that the applicant suffers from a physical infirmity that may prevent the safe handling of a handgun. The department will request from the applicant, as supplementary information under 13 AAC 30.050(f), a written report by a physician, optometrist, or other competent medical authority, who can lawfully practice in this state, that the applicant does not currently suffer from a physical infirmity that prevents the safe handling of a handgun.

(b) The department will notify a permittee that it intends to revoke a permit under 13 AAC 30.060(g) or (h) if, after investigation of a report from a criminal justice agency, physician or other medical provider, or member of the general public relating to the handling of a handgun by, or the physical condition of, a permittee, the department has reason to believe that a permittee

(1) suffers from a physical infirmity that may prevent the safe handling of a handgun, the department will use the procedures set out in 13 AAC 30.060(g) to revoke the permit;

(2) is not able to safely or competently handle a handgun, the department will use the procedures set out in 13 AAC 30.060(h) to revoke the permit.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(c) The department will not investigate a report relating to the handling of a handgun by, or the physical condition of, a permittee unless the report

(1) is in writing;

(2) is signed; and

(3) provides specific information pertaining to the permittee's physical condition or handling of a handgun.

Authority: AS 18.65.700 AS 18.65.705 AS 18.65.710 AS 18.65.775

13 AAC 30.140. Application forms

(a) The department will provide application forms for persons to use in applying for a permit, certificate of approval, or other service under this chapter. An application form submitted under this chapter, and any document accompanying an application form, must be completed in ink.

(b) Along with an application form, the department will provide to an applicant for a permit

(1) a copy of the definitions of the following terms, as set out in 13 AAC 30.900:

(A) alcohol treatment program;

(B) convicted;

(C) felony;

(D) resident; and

(E) substance abuse treatment program;

(2) a concise summary of where, when, and by whom a handgun can be carried under state and federal law; and

(3) written notice that, for purposes of AS 18.65.705(4) and (5), the date of conviction is the date sentence was imposed or imposition of sentence was suspended under AS 12.55.085 or a similar procedure in another jurisdiction.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

Authority: 18.65.700 18.65.775

13 AAC 30.150. Reciprocity

The department will post, on its official Internet website, the status of reciprocity with another state or a political subdivision of another state. The department will distribute a list of those jurisdictions with reciprocity to a person who makes a request.

Authority: AS 18.65.748 AS 18.65.775

13 AAC 30.800. Confidentiality

Repealed 5/8/2002.

13 AAC 30.900. Definitions

(a) In this chapter,

(1) repealed 5/8/2002;

(2) repealed 12/9/98;

(3) "approved handgun course" means a handgun course that has a certificate of approval under 13 AAC 30.070;

(4) "competence" has the meaning given in AS 18.65.790;

(5) "commissioner" means the commissioner of the Department of Public Safety;

(6) "convicted" or "conviction" means that a person has entered a plea of guilty or no contest to, or has been found guilty by a court or jury of, a criminal offense, regardless of whether the judgment was after that set aside under AS 12.55.085 or a similar procedure in another jurisdiction, or was the subject of a pardon or other executive clemency, but does not include a judgment that has been reversed or vacated by a court as a result of motion, appellate action, petition for writ of habeas corpus, or application for post-conviction relief under Rule 35.1 of the Alaska Rules of Criminal Procedure or a similar procedure in another jurisdiction;

(7) "department" means the Department of Public Safety;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(8) repealed 12/9/98;

(9) "office of the Alaska State Troopers" means an office of

(A) the Department of Public Safety, division of Alaska state troopers;

(B) the Department of Public Safety, division of fish and wildlife protection; or

(C) a municipal police department that has submitted a written request to the commissioner to accept applications for concealed handgun permits, and has been approved in writing by the commissioner to accept applications;

(10) "permit" means a permit to carry a concealed handgun issued under this chapter;

(11) "permittee" means a person to whom a permit has been issued.

(12) "nics" means National Instant Check System administered by the Federal Bureau of Investigation.

(b) As used in AS 18.65.700 - 18.65.790,

(1) "alcohol treatment program" means counseling about the effects of the consumption of alcohol on human behavior and physiology, whether provided individually or in a group, by a public or private agency, or on an in-patient or out-patient basis;

(2) "approved handgun course" means a course of handgun instruction operated by the holder of a certificate of approval issued under 13 AAC 30.070;

(3) "convicted" has the meaning given in (a) of this section;

(4) repealed 12/9/98;

(5) "felony" means an offense punishable by more than a year of incarceration if committed by an adult, under the laws of this state or a similar law of another jurisdiction;

(6) repealed 12/9/98;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(7) "judge" means a judge, justice, magistrate, or deputy magistrate of this state or the United States, whether sitting in a regular or pro tem capacity, but does not include a special or standing master, or an administrative law judge or hearing officer;

(8) repealed 12/9/98;

(9) repealed 12/9/98;

(10) "resident" has the meaning given in AS 01.10.055;

(11) "statement" has the meaning in AS 11.56.240;

(12) "substance abuse treatment program" means counseling about the effects on human behavior and physiology, of the consumption of alcohol, illegal drugs, or other controlled substances, excluding tobacco, whether provided individually or in a group, by a public or private agency, or on an in-patient or out-patient basis;

(13) repealed 12/9/98;

(14) "honorably retired peace officer of this state" means a peace officer who establishes eligibility under 13 AAC 30.085;

(15) "peace officer" has the meaning given in AS 11.81.900.

(c) As used in AS 18.65.700 - 18.65.790 and this chapter, "identification card" means an identification card, issued by the department, that contains a photograph of the person named on the card.

Authority: AS 18.65.755 AS 18.65.775

Misconduct Involving Weapons

AS 11.61.190. Misconduct involving weapons in the first degree.

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

(1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 - 11.71.040; or

(2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony.

AS 11.61.195. Misconduct involving weapons in the second degree.

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

(1) possesses a firearm during the commission of an offense under AS 11.71.010 - 11.71.040;

(2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot immediately adjacent to

(A) a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer; or

(B) an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children; or

(3) discharges a firearm at or in the direction of

(A) a building with reckless disregard for a risk of physical injury to a person; or

(B) a dwelling.

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(b) Misconduct involving weapons in the second degree is a class B felony.

AS 11.61.200. Misconduct involving weapons in the third degree.

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

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

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

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

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

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

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

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

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 - 18.66.180

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

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

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

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

(12) *[Repealed, Sec. 2 ch 100 SLA 2010].*

(b) The provisions of

(1) (a)(1) of this section do not apply to a person if

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

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

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

(2) (a)(2) or (10) of this section do not apply to a person if

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

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

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

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

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

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

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

(f) *[Repealed, Sec. 2 ch 100 SLA 2010].*

(g) *[Repealed, Sec. 2 ch 100 SLA 2010].*

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

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

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

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

(iii) bomb; or

(iv) grenade;

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

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

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

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

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

AS 11.61.210. Misconduct involving weapons in the fourth degree.

(a) A person commits the crime of misconduct involving weapons in the fourth degree if the person

(1) possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body in circumstances other than described in AS 11.61.200(a)(7);

(2) discharges a firearm from, on, or across a highway;

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person under circumstances other than those described in AS 11.61.195(a)(3)(A);

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

(5) manufactures, sells, or transfers a switchblade or a gravity knife;

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(6) knowingly sells a firearm or a defensive weapon to a person under 18 years of age;

(7) other than a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a person 21 years of age or older may possess

(A) a deadly weapon, other than a loaded firearm, in the trunk of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; or

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession.

(b) *[Repealed, Sec. 4 ch 63 SLA 1990].*

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(c) The provisions of (a)(7) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Misconduct involving weapons in the fourth degree is a class A misdemeanor.

AS 11.61.215. Intoxication as applicable to possession of a firearm. [Repealed, Sec. 11 ch 59 SLA 1991].

Repealed or Renumbered

AS 11.61.220. Misconduct involving weapons in the fifth degree.

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) is 21 years of age or older and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon,

(A) that is concealed on the person, and, when contacted by a peace officer, the person fails to

(i) immediately inform the peace officer of that possession; or

(ii) allow the peace officer to secure the deadly weapon, or fails to secure the weapon at the direction of the peace officer, during the duration of the contact;

(B) that is concealed on the person within the residence of another person unless the person has first obtained the express permission of an adult residing there to bring a concealed deadly weapon within the residence;

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

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

(4) knowingly possesses a firearm

(A) within the grounds of or on a parking lot immediately adjacent to an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

government for the care of children, except that a person 21 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a closed container of a motor vehicle;

(B) within a

(i) courtroom or office of the Alaska Court System; or

(ii) courthouse that is occupied only by the Alaska Court System and other justice-related agencies; or

(C) within a domestic violence or sexual assault shelter that receives funding from the state;

(5) possesses or transports a switchblade or a gravity knife; or

(6) is less than 21 years of age and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person.

(b) In a prosecution under (a)(6) of this section, it is an affirmative defense that the defendant, at the time of possession, was

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

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

(c) The provisions of (a)(2) and (4) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) In a prosecution under (a)(2) of this section, it is

(1) an affirmative defense that

(A) *[Repealed, Sec. 7 ch 62 SLA 2003].*

(B) the loaded firearm was a concealed handgun as defined in AS 18.65.790; and

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(C) the possession occurred at a place designated as a restaurant for the purposes of AS 04.16.049 and the defendant did not consume intoxicating liquor at the place;

(2) a defense that the defendant, at the time of possession, was on business premises

(A) owned by or leased by the defendant; or

(B) in the course of the defendant's employment for the owner or lessee of those premises.

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

(f) For purposes of (a)(2) and (e) of this section, a firearm is loaded if the

(1) firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge; and

(2) chamber, magazine, clip, or cylinder is installed in or on the firearm.

(g) Misconduct involving weapons in the fifth degree is a class B misdemeanor.

(h) The provisions of (a)(1) and (6) of this section do not apply to a

(1) peace officer of this state or a municipality of this state acting within the scope and authority of the officer's employment;

(2) peace officer employed by another state or a political subdivision of another state who, at the time of the possession, is

(A) certified as a peace officer by the other state; and

(B) acting within the scope and authority of the officer's employment; or

CONCEALED HANDGUN PERMIT STATUTES AND REGULATIONS

(3) police officer of this state or a police officer or chief administrative officer of a municipality of this state; in this paragraph, "police officer" and "chief administrative officer" have the meanings given in AS 18.65.290.

(i) In a prosecution

(1) under (a)(4)(B) of this section, it is a defense that the defendant, at the time of possession, was authorized to possess the firearm under a rule of court;

(2) under (a)(4)(C) of this section, it is a defense that the defendant, at the time of possession, was authorized in writing by the administrator of the shelter to possess the firearm.

(j) In (a)(1) of this section, "contacted by a peace officer" means stopped, detained, questioned, or addressed in person by the peace officer for an official purpose.

AS 11.61.230. [Renumbered as AS 11.46.315].

Repealed or Renumbered

Sec. 11.61.190. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

- (1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 - 11.71.040; or
 - (2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.
- (b) Misconduct involving weapons in the first degree is a class A felony.

Sec. 11.61.195. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly

- (1) possesses a firearm during the commission of an offense under AS 11.71.010 - 11.71.040;
 - (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot immediately adjacent to
 - (A) a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer; or
 - (B) an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children; or
 - (3) discharges a firearm at or in the direction of
 - (A) a building with reckless disregard for a risk of physical injury to a person; or
 - (B) a dwelling.
- (b) Misconduct involving weapons in the second degree is a class B felony.

Sec. 11.61.200. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

- (1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;
- (2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;
- (3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;
- (4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;
- (5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;
- (6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;
- (7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's

physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

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

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

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

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

(12) *[Repealed, Sec. 2 ch 100 SLA 2010]*.

(b) The provisions of

(1) (a)(1) of this section do not apply to a person if

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

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

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

(2) (a)(2) or (10) of this section do not apply to a person if

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

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

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

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

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

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

and authority of the officer's employment.

(f) *[Repealed, Sec. 2 ch 100 SLA 2010]*.

(g) *[Repealed, Sec. 2 ch 100 SLA 2010]*.

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

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

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

(iii) bomb; or

(iv) grenade;

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

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

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in [AS 12.55.185](#).

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

Sec. 11.61.210. Misconduct involving weapons in the fourth degree. (a) A person commits the crime of misconduct involving weapons in the fourth degree if the person

(1) possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body in circumstances other than described in [AS 11.61.200\(a\)\(7\)](#);

(2) discharges a firearm from, on, or across a highway;

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person under circumstances other than those described in [AS 11.61.195\(a\)\(3\)\(A\)](#);

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

(5) sells or transfers a switchblade or a gravity knife to a person under 18 years of age without the prior written consent of the person's parent or guardian;

(6) knowingly sells a firearm or a defensive weapon to a person under 18 years of age;

(7) other than a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a person 21 years of age or older may possess

(A) a deadly weapon, other than a loaded firearm, in the trunk of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; or

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession.

(b) *[Repealed, Sec. 4 ch 63 SLA 1990].*

(c) The provisions of (a)(7) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Misconduct involving weapons in the fourth degree is a class A misdemeanor.

Sec. 11.61.215. Intoxication as applicable to possession of a firearm. [Repealed, Sec. 11 ch 59 SLA 1991]. Repealed or Renumbered

Sec. 11.61.220. Misconduct involving weapons in the fifth degree. (a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) is 21 years of age or older and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon,

(A) that is concealed on the person, and, when contacted by a peace officer, the person fails to

(i) immediately inform the peace officer of that possession; or

(ii) allow the peace officer to secure the deadly weapon, or fails to secure the weapon at the direction of the peace officer, during the duration of the contact;

(B) that is concealed on the person within the residence of another person unless the person has first obtained the express permission of an adult residing there to bring a concealed deadly weapon within the residence;

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

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

(4) knowingly possesses a firearm

(A) within the grounds of or on a parking lot immediately adjacent to an entity, other than a private residence, licensed as a child care facility under [AS 47.32](#) or recognized by the federal government for the care of children, except that a person 21 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a closed container of a motor vehicle;

- (B) within a
 - (i) courtroom or office of the Alaska Court System; or
 - (ii) courthouse that is occupied only by the Alaska Court System and other justice-related agencies; or
- (C) within a domestic violence or sexual assault shelter that receives funding from the state;
- (5) *[Repealed, Sec. 7 ch 54 SLA 2013]*.
- (6) is less than 21 years of age and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person.
- (b) In a prosecution under (a)(6) of this section, it is an affirmative defense that the defendant, at the time of possession, was
 - (1) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or
 - (2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.
- (c) The provisions of (a)(2) and (4) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.
- (d) In a prosecution under (a)(2) of this section, it is
 - (1) an affirmative defense that
 - (A) *[Repealed, Sec. 7 ch 62 SLA 2003]*.
 - (B) the loaded firearm was a concealed handgun as defined in [AS 18.65.790](#); and
 - (C) the possession occurred at a place designated as a restaurant for the purposes of [AS 04.16.049](#) and the defendant did not consume intoxicating liquor at the place;
 - (2) a defense that the defendant, at the time of possession, was on business premises
 - (A) owned by or leased by the defendant; or
 - (B) in the course of the defendant's employment for the owner or lessee of those premises.
 - (e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it; a deadly weapon on a person is not concealed if it is an unloaded firearm encased in a closed container designed for transporting firearms.
 - (f) For purposes of (a)(2) and (e) of this section, a firearm is loaded if the
 - (1) firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge; and
 - (2) chamber, magazine, clip, or cylinder is installed in or on the firearm.
 - (g) Misconduct involving weapons in the fifth degree is a class B misdemeanor.
 - (h) The provisions of (a)(1) and (6) of this section do not apply to a
 - (1) peace officer of this state or a municipality of this state acting within the scope and authority of the officer's employment;
 - (2) peace officer employed by another state or a political subdivision of another state who, at the time of the possession, is
 - (A) certified as a peace officer by the other state; and
 - (B) acting within the scope and authority of the officer's employment; or
 - (3) police officer of this state or a police officer or chief administrative officer of a municipality of this state; in this paragraph, "police officer" and "chief administrative officer" have the meanings given in [AS](#)

18.65.290.

(i) In a prosecution

(1) under (a)(4)(B) of this section, it is a defense that the defendant, at the time of possession, was authorized to possess the firearm under a rule of court;

(2) under (a)(4)(C) of this section, it is a defense that the defendant, at the time of possession, was authorized in writing by the administrator of the shelter to possess the firearm.

(j) In (a)(1) of this section, "contacted by a peace officer" means stopped, detained, questioned, or addressed in person by the peace officer for an official purpose.

Students for Concealed Carry on Campus

Students for Concealed Carry on Campus is a non-partisan, grassroots organization aimed at drawing attention to the fact that holders of concealed handgun licenses/concealed carry weapons permits are forced by state laws and school policies to disarm before entering most college campuses, despite being legally permitted to carry concealed handguns virtually everywhere else—office buildings, movie theaters, grocery stores, shopping malls, banks, etc.

Declaring a college campus a “gun free zone” may make some people *feel* safer, but as the April 16, 2007, massacre at Virginia Tech and the February 14, 2008, massacre at Northern Illinois University illustrated, feeling safe is not the same as being safe. Denying licensed individuals the means to defend themselves on college campuses turns institutions of higher learning into supermarkets for would-be rapists and mass murderers.

Current state laws and school policies prohibit licensed, law-abiding citizens from carrying concealed handguns onto college campuses, while doing nothing to disarm individuals not concerned with following the rules. These laws and policies hand armed madmen, like the Virginia Tech and NIU killers, virtual cornucopias of defenseless victims. In the event of a school shooting, students and faculty are left with no recourse but to hide under their desks, hoping to survive until enough police arrive to formulate a plan and storm the building.

Students for Concealed Carry on Campus hopes that increased awareness of the discrepancy between the rules on college campuses and the rules outside of college campuses will motivate citizens to push state legislators and campus administrators to amend existing laws and policies so that concealed handgun license/concealed carry weapons permit holders can legally carry their firearms on college campuses, the same way they currently do at almost all other unsecured (no metal detectors or x-ray machines) locations.

In most states a CHL/CCW applicant must be 21 years of age or older, pass both state and federal (FBI) fingerprint and background checks (often including investigations into records of mental health and sealed/expunged criminal records), attend a state mandated training course, pass both a written and a practical (shooting) test, and have his or her fingerprints and photograph on file with both state authorities and the FBI. Statistically*, concealed handgun license/concealed carry weapons permit holders commit violent crimes at a rate five times lower than non-license holders. CHL/CCW holders are neither criminals nor vigilantes hoping for the chance to shoot a “bad guy;” they are concerned citizens, just like you, who desire the means to extricate themselves from danger, should the unimaginable occur.

SCCC demands to know why individuals who are deemed by state and federal authorities to be competent and trustworthy enough to carry concealed handguns elsewhere are denied this right on college campuses.

For more information on the issue of concealed carry on campus and why it would NOT lead to more violence on college campuses or detract from the educational process, please visit www.ConcealedCampus.com.

*“Crime, Deterrence, and Right-to-Carry Concealed Handguns,” John Lott and David Mustard, *Journal of Legal Studies* (v.26, no.1, pages 1-68, January 1997); “An Analysis of The Arrest Rate Of Texas Concealed Handgun License Holders as Compared to the Arrest Rate of the Entire Texas Population,” William E. Sturdevant, September 1, 2000; Florida Department of Justice statistics, 1998; Florida Department of State, “Concealed Weapons/Firearms License Statistical Report,” 1998; Texas Department of Public Safety and the U.S. Census Bureau, reported in *San Antonio Express-News*, September, 2000; Texas Department of Corrections data, 1996-2000

STUDENTS FOR CONCEALED CARRY ON CAMPUS

The Facts

- 47 states currently issue Concealed Carry Weapons permits (CCWs) or Concealed Handgun Licenses (CHLs).
 - *Vermont neither offers nor requires a license to carry a handgun (openly or concealed). Illinois and Wisconsin do not have provisions for legal concealed carry.
- Criminals are more afraid of confronting a potential victim with a gun than they are of the police.
 - *U.S. Department of Justice, National Institute of Justice, "The Armed Criminal in America: A Survey of Incarcerated Felons," Research Report (July 1985)
- 3/5 of convicted felons say they would not "mess around" with a person they suspected might have a gun.
 - *U.S. Department of Justice, National Institute of Justice, "The Armed Criminal in America: A Survey of Incarcerated Felons," Research Report (July 1985)
- CCW/CHL holders are statistically LESS violent than the rest of the population. They are arrested for violent crimes at a rate five times lower than non-license holders (even lower than police officers in many states).
 - *Florida Department of State, "Concealed Weapons/Firearms License Statistical Report," 1998
 - *Texas Department of Public Safety and the U.S. Census Bureau, reported in *San Antonio Express-News*, September 2000
 - *FBI, Uniform Crime Reports, 2004 - excludes Hawaii and Rhode Island - small populations and geographic isolation create other determinants to violent crime.
 - *John Lott and David Mustard, "Crime, Deterrence, and Right-to-Carry Concealed Handguns," *Journal of Legal Studies* (v.26, no.1, pages 1-68, January 1997)
 - *William E. Sturdevant, "An Analysis of the Arrest Rate of Texas Concealed Handgun License Holders as Compared to the Arrest Rate of the Entire Texas Population," September 1, 2000
 - *"D.C. Police Paying for Hiring Binge," *Washington Post*, 8/28/94
 - *Memorandum by James T. Moore, Commissioner of Florida's Department of Law Enforcement, to the Office of the Governor, dated 3/15/95
- Despite the predictions of those who opposed the passage of state Concealed Carry laws, when such laws were first proposed two decades ago, the presence of concealed handguns has not created an epidemic of everyday arguments turning into shootings.
 - *Colorado State University and all public universities in Utah allow CHL/CCW holders to carry their firearms on campus. Those schools have not had any problems.
 - *"I lobbied against the law in 1993 and 1995 because I thought it would lead to wholesale armed conflict. That hasn't happened. All the horror stories I thought would come to pass didn't happen. No bogeyman. I think it's worked out well, and that says good things about the citizens who have permits. I'm a convert." -- Glenn White, president of the Dallas Police Association, *Dallas Morning News*, 12/23/97
 - *"I...[felt] that such legislation present[ed] a clear and present danger to law-abiding citizens by placing more handguns on our streets. Boy was I wrong. Our experience in Harris County, and indeed statewide, has proven my fears absolutely groundless." -- Harris County [Texas] District Attorney John Holmes, *Dallas Morning News*, 12/23/97
 - *"Some of the public safety concerns which we imagined or anticipated a couple of years ago, to our pleasant surprise, have been unfounded or mitigated." -- Fairfax County VA Police Major Bill Brown, *Alexandria Journal*, 7/9/97
 - *"I was wrong. But I'm glad to say I was wrong." -- Arlington County VA Police Detective Paul Larson, *The Alexandria Journal*, 7/9/97
 - *"The concerns I had--with more guns on the street, folks may be more apt to square off against one another with weapons--we haven't experienced that." -- Charlotte-Mecklenburg NC Police Chief Dennis Nowicki, *The News and Observer*, 11/24/97
- Concealed Carry Laws reduce mass public shootings.
 - *Lott, J., Landes, W.; "Multiple Victim Public Shootings, Bombings, and Right-to-Carry Concealed Handgun Laws: Contrasting Private and Public Law Enforcement," University of Chicago – covers years 1977 to 1995
- Reducing the number of guns does NOT reduce violent crime.
 - *Don B. Kates and Gary Mauser, "Would Banning Firearms Reduce Murder and Suicide? A Review of International and Some Domestic Evidence"
- The United States Supreme Court has ruled that police have NO duty to protect the lives of citizens, yet concealed handgun license holders must leave their greatest means of defenses behind when they step onto college campuses.
 - *"...law enforcement officers have no affirmative duty to provide such protection..." - *South v. Maryland*, 1856
 - *"...there is no Constitutional right to be protected by the state against being murdered by criminals or madmen." - *Bowers v. DeVito*, 1982
- Concealed handgun license holders carry for defense of life only. They do not act like the police and actively seek out a shooter.
- Nearly every "shootout" between two armed individuals is over in less than 10 seconds. Mass shootings can exceed 30 minutes.
 - **In The Line of Fire: Violence Against Law Enforcement*, U.S. Department of Justice, Federal Bureau of Investigation, National Institute of Justice, 1997
 - *The real Gunfight at the O.K. Corral, a gunfight involving nine armed participants, lasted only about 30 seconds.
 - *Virginia Tech massacre – 9 minutes; Columbine High School massacre – 49 minutes; Luby's Cafeteria massacre – 15 minutes
- Most victims of mass shootings are shot at pointblank range, by assailants who move slowly and methodically from victim to victim. It requires neither superhuman reflexes nor deadeye accuracy to defend oneself against such an attack.
- Police forces are trained to expect armed "bad guys" and armed "good guys"—be it off-duty/undercover police officers or armed civilians—in tactical scenarios. CHL holders are state and FBI certified "good guys."
- There are no significant differences between carrying a concealed handgun on a college campus and carrying a concealed handgun in an office building, shopping mall, restaurant, grocery store, bank, or movie theater (a few of the places CHL/CCW holders are currently permitted to carry concealed handguns).

53-5a-102. Uniform firearm laws.

(1) The individual right to keep and bear arms being a constitutionally protected right under Article I, Section 6 of the Utah Constitution, the Legislature finds the need to provide uniform civil and criminal firearm laws throughout the state.

(2) Except as specifically provided by state law, a local authority or state entity may not:

(a) prohibit an individual from owning, possessing, purchasing, selling, transferring, transporting, or keeping a firearm at the individual's place of residence, property, business, or in any vehicle lawfully in the individual's possession or lawfully under the individual's control; or

(b) require an individual to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(3) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is uniformly applicable throughout this state and in all its political subdivisions and municipalities.

(4) All authority to regulate firearms is reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities.

(5) Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact, establish, or enforce any ordinance, regulation, rule, or policy pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on either public or private property.

(6) As used in this section:

(a) "firearm" has the same meaning as defined in Section 76-10-501; and

(b) "local authority or state entity" includes public school districts, public schools, and state institutions of higher education.

(7) Nothing in this section restricts or expands private property rights.

Amended by Chapter 278, 2013 General Session

Concealed Carry Weapon Laws & College Campuses

In the United States, 49 out of 50 states have concealed carry weapons laws. Currently, there are 22 states that ban carrying a concealed weapon on a college campus:

Arkansas, California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming.

In 23 states the decision to ban or allow concealed carry weapons on campuses is made by each college or university individually: Alabama, Alaska, Arizona, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia.

Due to recent state legislation and court rulings, 5 states now have provisions allowing the carrying of concealed weapons on public postsecondary campuses. These states are Colorado, Mississippi, Oregon, Utah, and Wisconsin.

Utah remains the only state to have statute specifically naming public colleges and universities as public entities that do not have the authority to ban concealed carry, and thus, all 10 public institutions in Utah allow concealed weapons on their property. Recently passed Wisconsin legislation creates a provision that colleges and universities must allow concealed carry on campus grounds, however, campuses can prohibit weapons from campus buildings if signs are posted at every entrance explicitly stating that weapons are prohibited. All University of Wisconsin system campuses and technical community college districts are said to be putting this signage in place. Legislation passed in Mississippi in 2011 creates an exception to allow concealed carry on college campuses for those who have taken a voluntary course on safe handling and use of firearms by a certified instructor.

Recent court cases have also overturned some long standing system wide bans of concealed carry on state college and university campuses. In March 2012, the Colorado Supreme Court ruled that the University of Colorado's policy banning guns from campus violates the state's concealed carry law, and in 2011 the Oregon Court of Appeals overturned the Oregon University System's ban of guns on campuses, allowing those with permits to carry concealed guns on the grounds of these public colleges. In both cases, it was ruled that state law dictates only the legislature can regulate the use, sale and possession of firearms, and therefore these systems had overstepped their authority in issuing the bans. See the "Guns on Campus: Campus Action," page for more information on these rulings and other campuses that allow concealed carry on their grounds.

NCSL Website

<http://www.ncsl.org/issues-research/educ/guns-on-campus-overview.aspx>

Right-to-Carry 2008

There are 40 Right-to-Carry states. Thirty-six have “shall issue” laws, requiring that carry permits be issued to applicants who meet uniform standards established by the state legislature. Three have fairly-administered discretionary-issue carry permit systems. One, Vermont, respects the right to carry without a permit. Alaska, one of the “shall issue” states, has its permit system for the purpose of permit-reciprocity with other states, and also adopted a no-permit-required law in 2003.

• **There are 10 non-RTC states.** Eight have restrictively-administered discretionary-issue systems. Only two—Illinois and Wisconsin—have no permit system and prohibit carrying.

• **The newest RTC states:** In 2006, Nebraska’s RTC law was signed by Gov. Dave Heineman (R); Kansas’ Senate and House overrode Gov. Kathleen Sebelius’ (D) veto of an RTC bill by votes of 30-10 and 91-33, respectively; and the Ohio Senate and House overrode then-Gov. Bob Taft’s (R) veto of a bill that improves the state’s 2004 RTC law, by votes of 21-12 and 71-21, respectively.



• **Other recent RTC initiatives:** In January 2006, Wisconsin’s Senate voted 23-10 to override Gov. Jim Doyle’s (D) veto of RTC; the Assembly fell two votes short, voting 64-34. In January 2004, Ohio then-Gov. Bob Taft (R) signed RTC into law and New Mexico’s Supreme Court upheld a 2003 RTC law. Colorado, Minnesota and Missouri adopted RTC in 2003, the latter by overriding Gov. Bob Holden’s (D) veto.

• **The right to self-defense is a fundamental right.** The U.S. constitution, the constitutions of 44 states, common law, and the laws of all 50 states recognize the right to use arms in self-defense. RTC laws respect the right to self-defense by allowing individuals to carry firearms for protection.

• **More RTC, less crime:** Violent crime rates since 2003 have been lower than anytime since the mid-1970s.¹ Since 1991, 23 states have adopted RTC, the number of privately-owned guns has risen by nearly 70 million,² and violent crime is down 38%. In 2006, the most recent year for which complete data are available, RTC states had lower violent crime rates, on average, compared to the rest of the country (total violent crime by 26%; murder, 31%; robbery, 50%; and aggravated assault, 15%).³

• **RTC and crime trends:** Studying crime trends in every county in the U.S., John Lott and David Mustard found, “allowing citizens to carry concealed weapons deters violent crimes and it appears to produce no increase in accidental deaths. If those states which did not have Right to Carry concealed gun provisions had adopted them in 1992, approximately 1,570 murders; 4,177 rapes; and over 60,000 aggravated assaults would have been avoided yearly....[W]hen state concealed handgun laws went into effect in a county, murders fell by 8.5 percent, and rapes and aggravated assaults fell by 5 and 7 percent.”⁴

• **RTC a success in every state:** Former Colorado Asst. Atty. Gen. David Kopel has written, “Whenever a state legislature first considers a concealed carry bill, opponents typically warn of horrible consequences....But within a year of passage, the issue usually drops off the news media’s radar screen, while gun-control advocates in the legislature conclude that the law wasn’t so bad after all.”⁵ A article on Michigan’s RTC law noted, “Concerns that permit holders would lose their tempers in traffic accidents have been unfounded. Worries about risks to police officers have also proved unfounded....National surveys of police show they support concealed handgun laws by a 3-1 margin....There is also not a single academic study that claims Right to Carry laws have increased state crime rates. The debate among academics has been over how large the benefits have been.”⁶

• **RTC permit-holders are more law-abiding than the rest of the public.** For example, Florida, which has issued more carry permits than any state has issued 1.36 million permits, but revoked only 165 (0.01%) due to gun crimes by permit-holders.⁷

Background: Before 1987, there were 10 RTC states. Indiana, Maine, New Hampshire, North Dakota, South Dakota and Washington had “shall issue” permit laws. Alabama and Connecticut had fairly-administered discretionary-issue systems. Georgia’s “shall issue” law was interpreted as discretionary in some jurisdictions. Vermont allowed carrying without a permit. Other states had restrictively-administered discretionary-issue carry permit systems or prohibited carrying.

In 1987, Florida enacted a “shall issue” law that has become the model for other states. Anti-gun groups, politicians and news media people predicted vigilante justice and “Wild West” shootouts on every corner. But through 1992, Florida’s murder rate decreased 23%, while the U.S. rate rose 9%; thereafter, murder decreased both nationally and in Florida.⁸ Then-Florida Licensing Division Director, John Russi, noted, “Florida’s concealed weapon law has been very successful. All major law enforcement groups supported the original legislation....[S]ome of the opponents of concealed weapon legislation in 1987 now admit the program has not created the problems many predicted.”⁹ In a 1995 letter to state officials, Dept. of Law Enforcement Commissioner James T. Moore wrote, “From a law enforcement perspective, the licensing process has not resulted in problems.”

• **29 states have adopted RTC since 1987.** Of these, 21 previously prohibited carrying and had no carry permit system; nine (indicated with an asterisk, below) had restrictively-administered discretionary-issue systems. 1989: Oregon, Penna. (Phila. included in 1995), and West Virginia (in Georgia a judicial ruling enforced “shall issue” statewide); 1990: Idaho and Mississippi; 1991: Montana; 1994: Alaska, Arizona, Tennessee and Wyoming; 1995: Arkansas, Nevada*, North Carolina, Oklahoma, Texas, Utah* and Virginia*; 1996: Kentucky, Louisiana* and South Carolina*; 2001: Michigan*; 2003: Colorado*; Iowa*

(by fairly administering its discretionary-issue system), New Mexico, Minnesota* and Missouri; 2004: Ohio; 2006: Kansas, Nebraska.

Citizens can defend themselves. Analyzing National Crime Victimization Survey data, criminologist Gary Kleck found, “robbery and assault victims who used a gun to resist were less likely to be attacked or to suffer an injury than those who used any other methods of self-protection or those who did not resist at all.”¹⁰ In the 1990s, Kleck and Marc Gertz found that guns were used for self-protection about 2.5 million times annually.¹¹ The late Marvin E. Wolfgang, self-described as “as strong a gun-control advocate as can be found among the criminologists in this country,” who wanted to “eliminate all guns from the civilian population and maybe even from the police,” said, “The methodological soundness of the current Kleck and Gertz study is clear. I cannot further debate it. . . . I cannot fault their methodology.”¹² A study for the Dept. of Justice found that 34% of felons had been “scared off, shot at, wounded or captured by an armed victim,” and 40% of felons have not committed crimes, fearing potential victims were armed.¹³

The right to self-defense has been recognized for centuries. Cicero said 2,000 years ago, “If our lives are endangered by plots or violence or armed robbers or enemies, any and every method of protecting ourselves is morally right;” English jurist Sir William Blackstone observed that the English Bill of Rights recognized “the right of having and using arms for self-preservation and defense” as intended “to protect and maintain inviolate the three great and primary rights,” the first of which is “personal security.”¹⁴ Sir Michael Foster, judge of the Court of King’s Bench, wrote in the 18th century, “The right of self-defense. . . is founded in the law of nature, and is not, nor can be, superseded by any law of society.”¹⁵

The Supreme Court, in *U.S. v. Cruikshank* (1876), recognized that the right to arms is an individual right, stating that it “is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence.” In *Beard v. U.S.* (1895), the court approved the common-law rule that a person “may repel force by force” in self-defense, and concluded that when attacked a person “was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such a way and with such force” as needed to prevent “great bodily injury or death.” The laws of all states and the constitutions of 44 states recognize the right to armed self-defense. In the Gun Control Act (1968) and Firearms Owners’ Protection Act (1986), Congress stated that it did not intend to “place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to . . . personal protection, or any other lawful activity.”

Police aren’t required to protect you. In *Warren v. District of Columbia* (1981), the D.C. Court of Appeals ruled, “official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection. . . a government and its agents are under no general duty to provide public services, such as police protection, to any particular citizen.” In *Bowers v. DeVito* (1982), the Seventh Circuit Court of Appeals ruled, “[T]here is no constitutional right to be protected by the state against being murdered by criminals or madmen.”

National RTC reciprocity: H.R. 226, by Rep. Cliff Stearns (R-Fla.), proposes a federal law, that any person with a valid state-issued carry permit may carry in any other state, as follows: In a state that issues carry permits, its laws would apply. In states that don’t issue permits, a federal standard would permit carrying in places other than police stations; courthouses; public polling places; meetings of state, county, or municipal governing bodies; schools; passenger areas of airports; etc.

Nonsense from Brady Campaign (formerly Handgun Control, Inc.): Sarah Brady: “the only reason for guns in civilian hands is for sporting purposes;” former HCI Chair, the late Pete Shields: “put up no defense - give them what they want;” Brady Center’s Dennis Henigan: self-defense is “not a federally guaranteed constitutional right.”¹⁶ In Jan. 1999, HCI claimed that between 1992-1997 violent crime declined less in RTC states than in other states.¹⁷ (HCI previously claimed RTC caused crime to rise.) HCI erred in categorizing 31 states as having RTC during the period, since only 17 of the 31 had RTC in 1992. HCI calculated crime trends from 1992 to under-represent the impact of RTC laws; by 1992 many states had RTC for many years and already experienced decreases in crime. HCI misclassified Alabama and Connecticut as “restrictive” states, doing so because crime had decreased in both. HCI credited restrictive

laws for crime decreasing in some states, but states that have restrictive carry laws have had them for many years, and crime did not begin declining in those states until the 1990s, and did so due to factors unrelated to guns.

Nonsense from Violence Policy Center: In 1995, VPC claimed Florida's RTC law "puts guns into the hands of criminals."¹⁸ The claim was false, since the law permits a person to carry, not acquire, a firearm. VPC claimed "criminals do apply for concealed carry licenses," without noting that such applications are rejected. Contradicting itself, VPC noted that criminals had requested that their rejected applications be reconsidered. "To set the record straight," Florida Secy. of State, Sandra B. Mortham, said, "As of November 30, 1995, the Department had denied 723 applications due to criminal history. The fact that these 723 individuals did not receive a license clearly indicates that the process is working." She added, "the majority of concealed weapon or firearm licensees are honest, law-abiding citizens exercising their right to be armed for the purpose of lawful self-defense."¹⁹ In 2001, VPC claimed there are more women murdered with handguns than criminals killed by in self-defense.²⁰ The value of handguns for self-defense is not measured by how many criminals are killed, however. More important is how often people use handguns to prevent crimes and how often criminals do not attack for fear the potential victim is armed. Also, VPC undercounted the number of criminals killed in self-defense by counting only those noted in police reports, thus excluding defensive homicides later determined to have been appropriate.

McDowell math: In March 1995, anti-gun researcher David McDowell claimed that gun homicide rates increased in Miami, Jacksonville and Tampa after Florida's 1987 RTC law.²¹ But homicide rates fell 10%, 18% and 20%, respectively, in those metro areas from 1987 until 1993, the most recent data at the time.²² To show an increase, McDowell calculated Jacksonville and Tampa trends from the early 1970s, when rates were lower than in 1993, but calculated Miami's from 1983, since rates before 1983 were higher and their inclusion would show that the rate had decreased. None of McDowell's homicides was committed by a carry permit holder, and he did not indicate which homicides had occurred in situations where a permit would have been required to carry a gun. McDowell has also claimed that D.C.'s murder rate decreased after its 1977 handgun ban. In fact, the rate tripled after the ban.²³

The 43:1 claim: Based upon a small study of King's County (Seattle), Washington, gun control supporters claim a gun in the home is "43 times more likely" to be used to kill a family member than a criminal.²⁴ To reach that ratio, self-defense firearms uses are grossly undercounted by counting only cases in which criminals were killed. Most often, when guns are used to defend against criminals, the criminals are only scared off, captured or wounded. Kleck has called the 43:1 ratio and its variants "the most nonsensical statistic in the gun control debate."²⁵

1. BJS (<http://bjsdata.ojp.usdoj.gov/dataonline/>) and FBI (www.fbi.gov/ucr/05cius/offenses/violent_crime/index.html).

2. BATF, "Firearms Commerce in the United States 2001/2002" (<http://www.atf.gov/pub/index.htm> - Firearms).

3. Note 1, FBI.

4. Lott, "Crime, Deterrence, and Right To Carry Concealed Handguns," 1996.

5. David Kopel, "The Untold Triumph of Concealed-Carry Permits," *Policy Review*, July-Aug. 1996, p. 9.

6. "Should Michigan keep new concealed weapon law? Don't believe gun foe scare tactics," *Detroit News*, 1/14/01.

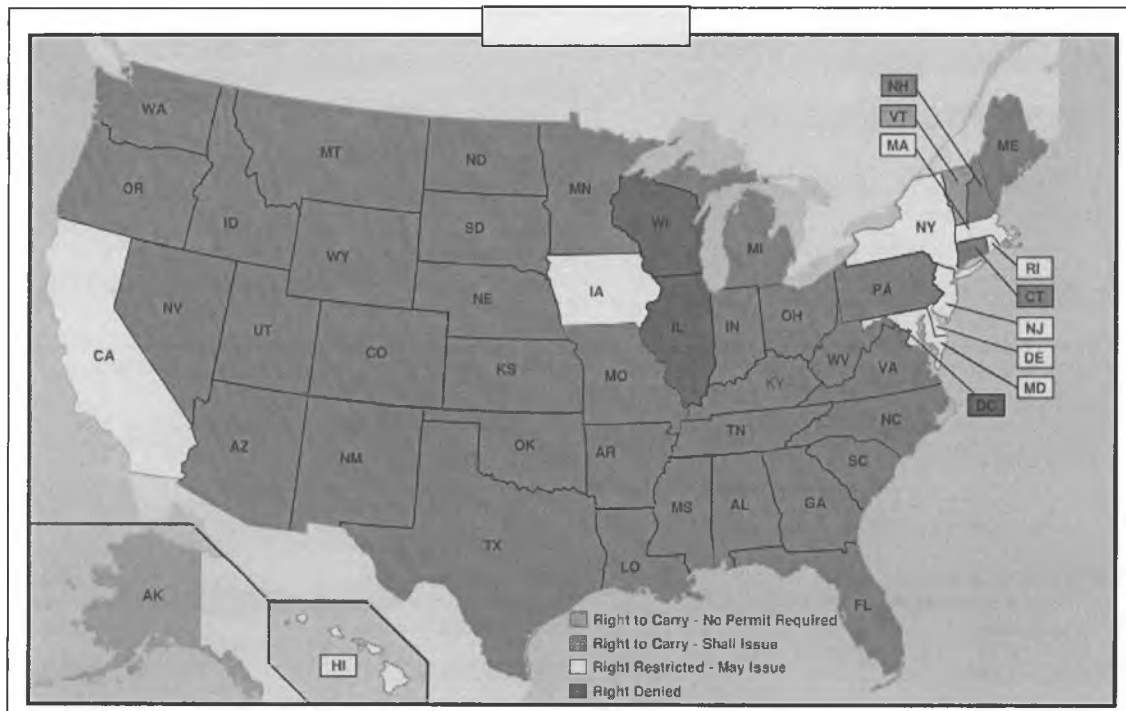
7. Florida Division of Licensing, Monthly Statistical Report (http://licgweb.doacs.state.fl.us/stats/cw_monthly.html).

8. Note 1, BJS.

9. Testimony before the Michigan House of Representatives Judiciary Committee, 12/5/95
10. *Targeting Guns*, Aldine de Gruyter, 1997, p. 171.
11. "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun," *Journal of Criminal Law and Criminology*, Fall 1995, pp. 150-187.
12. "A Tribute to a View That I Have Opposed," *Journal of Criminal Law and Criminology*, Fall 1995, pp. 188-192.
13. J. Wright and P. Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms*, 1986, p. 155.
14. Stephen P. Halbrook, *That Every Man Be Armed*, The Independent Institute, 1994, pp. 17, 54.
15. Dowlut, Knoop, "State Constitutions and The Right to Keep and Bear Arms," *Okla. City Univ. Law Review*, 1982, p. 183.
16. Brady: Tom Jackson, "Keeping the battle alive," *Tampa Tribune*, 10/21/93; Shields, *Guns Don't Die - People Do*, N.Y.: Arbor House, 1981; Henigan: *USA Today*, 11/20/91.
17. Handgun Control, Inc., "Concealed Truth." (www.bradycampaign.org/facts/research/?page=conctruth&menu=gvr).
18. "Concealed Carry: The Criminal's Companion."
19. *St. Petersburg Times*, 1/11/96.
20. "A Deadly Myth: Women, Handguns, and Self-Defense."
21. "Easing Concealed Firearm Laws: Effects on Homicide in Three States."
22. Note 1, BJS, and FBI, annual *Crime in the United States* reports.
23. *Ibid.*
24. A. L. Kellermann, "Protection or Peril?: An Analysis of Firearm-Related Deaths in the Home," *New England Journal of Medicine*, 1986.
25. Note 11, pp. 177-178.

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CONCEALED CARRY LAWS AND WEAPONS



MYTH: CONCEALED CARRY LAWS INCREASE CRIME

Fact: Forty states¹⁵⁰, comprising the majority of the American population, are "right-to-carry" states. Statistics show that in these states the crime rate fell (or did not rise) after the right-to-carry law became active (as of July, 2006). Nine states deny or restrict the right to carry.

Fact: Crime rates involving gun owners with carry permits have consistently been about 0.02% of all carry permit holders since Florida's right-to-carry law started in 1988.¹⁵¹

Fact: After passing their concealed carry law, Florida's homicide rate fell from 36% above the national average to 4% below, and remains below the national average (as of the last reporting period, 2005).¹⁵²

Fact: In Texas, murder rates fell 50% faster than the national average in the year after their concealed carry law passed. Rape rates fell 93% faster in the first year after enactment, and

¹⁵⁰At publication time two more states, Kansas and Nebraska, have pass shall-issue legislation, but insufficient data was available to determine how the change has impacted crime rates.

¹⁵¹ Florida Department of Justice, 1998

¹⁵²Cramer C and Kopel D. Shall issue: the new wave of concealed handgun permit laws. Golden CO: Independence Institute Issue Paper. October 17, 1994

500% faster in the second¹⁵³. Assaults fell 250% faster in the second year.¹⁵⁴

Fact: More to the point, crime is significantly higher in states without right-to-carry laws¹⁵⁵:

Fact: States that disallow concealed carry have violent crime rates 11% higher than national averages.¹⁵⁶

Fact: Deaths and injuries from mass public shootings fall dramatically after right-to-carry concealed handgun laws are enacted. Between 1977 and 1995¹⁵⁷, the average death rate from mass shootings plummeted by up to 91% after such laws went into effect, and injuries dropped by over 80%.¹⁵⁸

Type of Crime	% Higher in Restrictive States
Robbery	105%
Murder	86%
Assault	82%
Violent Crime	81%
Auto theft	60%
Rape	25%

¹⁵³ Some criminologist believe measuring first year change is shortsighted as it takes more than a year for permits to be issued, reach critical quantities, and for the criminally minded to recognize the new situation and avoid violent confrontations.

¹⁵⁴ Bureau of Justice Statistics, online database, reviewing Texas and U.S. violent crime from 1995-2001.

¹⁵⁵ John Lott, David Mustard: This study involved county level crime statistics from *all* 3,054 counties in the U.S., from 1977 through 1992. During this time ten states adopted right-to-carry laws. It is estimated that if all states had adopted right-to-carry laws, in 1992 the US would have avoided 1,400 murders, 4,200 rapes, 12,000 robberies, 60,000 aggravated assaults – and saved over \$5,000,000,000 in victim expenses.

¹⁵⁶ FBI, Uniform Crime Reports, 2004 - excludes Hawaii and Rhode Island - small populations and geographic isolation create other determinants to violent crime.

¹⁵⁷ Federal legislation created a nation “gun-free schools” policy, effective in 1996. Some criminologists maintain this created a new dynamic, encouraging mass murder on campus. Thus after 1995 it is increasing difficult to make comparisons based on the effects of CCWs and mass shootings.

¹⁵⁸ “Multiple Victim Public Shootings, Bombings, and Right-to-Carry Concealed Handgun Laws: Contrasting Private and Public Law Enforcement”, John Lott and William Landes, Law School of the University of Chicago, Law & Economics Working Paper No. 73

MYTH: PEOPLE WITH CONCEALED WEAPONS PERMITS WILL COMMIT CRIMES

Fact: The results for the first 30 states that passed “shall-issue” laws for concealed carry permits are similar.

Fact: The general public is:¹⁶⁸

- 5.7 times more likely to be arrested for violent offenses than CCW permit holders.
- 13.5 times more likely to be arrested for non-violent offenses than the than CCW permit holders.

Fact: In Texas, the general public is 14 more likely to commit a crime than a CCW permit holder. They are also five times more likely to commit a violent crime.¹⁶⁹

State ¹⁵⁹	Permits issued	Revoked permits	% Revoked	Violent Crime Rate Change ¹⁶⁰
Florida	1,327,321 ¹⁶¹	4,129	0.3%	-30.5%
Virginia	50,000 ¹⁶²	0	0.0%	-21.9%
Arizona	63,000 ¹⁶³	50	0.9%	-28.7%
North Carolina	59,597 ¹⁶⁴	1,274	1.2%	-26.4%
Minnesota	46,636 ¹⁶⁵	12	0.03%	16.8% ¹⁶⁶
Michigan	155,000 ¹⁶⁷	2,178	0.1%	1.4%

Fact: Even gun control organizations agree it is a non-problem, as in Texas – “because there haven’t been Wild West shootouts in the streets”.¹⁷⁰

Fact: Of 14,000 CCW licensees in Oregon, only 4 (0.03%) were convicted of the criminal (not necessarily violent) use or possession of a firearm.

¹⁵⁹ Reports were as received. No selection or filtering process was used.

¹⁶⁰ Violent crime rates are from inception of “shall issue” CCW through 2006, the most recent period available through the Bureau of Justice Statistics online database.

¹⁶¹ October 1987 through Jan 2008

¹⁶² 1995 – no follow-up data available

¹⁶³ 1994 through 2007

¹⁶⁴ 1995 through 2004

¹⁶⁵ 2002 through 2006

¹⁶⁶ In 2005 and 2006, Minnesota had an abnormal spike in robbery and aggravated assaults. The first three years of CCW in Minnesota saw violent crime rates being roughly stable.

¹⁶⁷ 2001 through 2007

¹⁶⁸ “An Analysis of the Arrest Rate of Texas Concealed Carry Handgun License Holders as Compared to the Arrest Rate of the Entire Texas Population”, William E. Sturdevant, PE, September 11, 1999

¹⁶⁹ Texas Department of Public Safety and the U.S. Census Bureau, reported in San Antonio Express-News, September, 2000

¹⁷⁰ Nina Butts, Texans Against Gun Violence, Dallas Morning News, August 10, 2000

Fact: In Florida, a state that has allowed concealed carry since late 1987, you are twice as likely to be attacked by an alligator as by a person with a concealed carry permit.¹⁷¹

MYTH: TEXAS CCW HOLDERS ARE ARRESTED 66% MORE OFTEN

Fact: Most arrests cited are not any form of violent crime (includes bounced checks or tax delinquency).¹⁷²

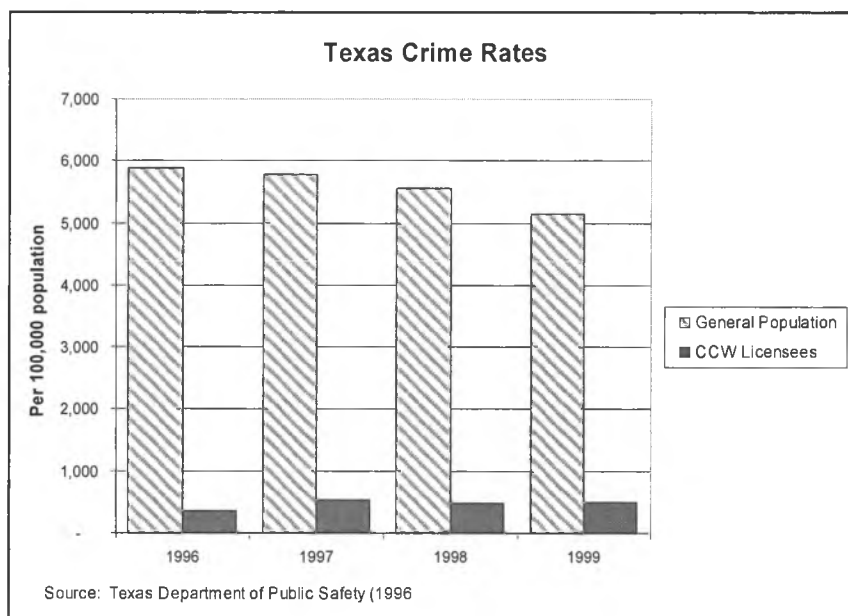
Fact: The VPC "study" only includes arrests, not convictions.

Fact: Many of these arrests in this premature VPC "study" came in the early years of Texas CCWs when the law was not understood by most of the law enforcement community or prosecutors.

Fact: Compared to the entire population, Texas CCW holders are about 7.6 times less likely to be arrested for a violent crime.¹⁷³ The numbers breakdown as follows:

- 214,000 CCW holders¹⁷⁴
- 526 (0.2%) felony arrests of CCW holders that have been adjudicated
- 100 (0.05%) felony convictions

Fact: A different study concludes that the four year violent crime arrest rate for CCW holders is 128 per 100,000. For the general population, it is 710 per 100,000. In other words, the general public is 5.5 times more likely to commit a violent crime than a CCW licensee.¹⁷⁵



¹⁷¹ Florida Department of State, "Concealed Weapons/Firearms License Statistical Report", 1998 – Florida Game and Fresh Water Fish Commission, December 1998

¹⁷² "Basis For Revocation Or Suspension Of Texas Concealed ", Texas Department of Public Safety, December 1, 1998

¹⁷³ Texas Department of Corrections data, 1996-2000, compiled by the Texas State Rifle Association, www.tsra.com/arrests.htm

¹⁷⁴ These are year 2000 records. As of 2005, the number of Texas concealed carry permit holders was 248,874.

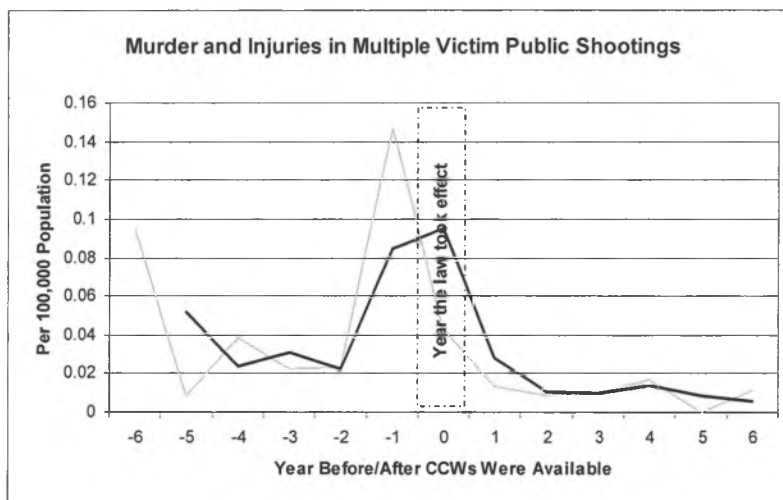
¹⁷⁵ "An Analysis Of The Arrest Rate Of Texas Concealed Handgun License Holders As Compared To The Arrest Rate Of The Entire Texas Population", William E. Sturdevant, PE, September 11, 1999

MYTH: CCWs WILL LEAD TO MASS PUBLIC SHOOTINGS

Fact: Multiple victim public shootings drop in states that pass shall-issue CCW legislation.¹⁷⁶

MYTH: PEOPLE DO NOT NEED CONCEALABLE WEAPONS

Fact: In 80% of gun defenses, the defender used a concealable handgun. A quarter of the gun defenses occurred in places away from the defender's home.¹⁷⁷



Fact: 77% of all violent crime occurs in public places.¹⁷⁸ This makes concealed carry necessary for almost all self-defense needs. But due to onerous laws forbidding concealed carry, only 26.8% of defensive gun uses occurred away from home.¹⁷⁹

Fact: Often, small weapons that are capable of being concealed are the only ones usable by people of small stature or with physical disabilities.

Fact: The average citizen doesn't need a Sport Utility Vehicle, but driving one is arguably safer than driving other vehicles. Similarly, carrying a concealable gun makes the owner – and his or her community – safer by providing protection not otherwise available.

MYTH: POLICE ARE AGAINST CONCEALED CARRYING BY CITIZENS

Fact: 66% of police chiefs believe that citizens carrying concealed firearms reduce rates of violent crime.¹⁸⁰

Fact: "All the horror stories I thought would come to pass didn't happen ...I think it's worked out well, and that says good things about the citizens who have permits. I'm a convert."¹⁸¹

¹⁷⁶ Lott John R., Landes William M.; "Multiple Victim Public Shootings, Bombings, and Right-to-Carry Concealed Handgun Laws: Contrasting Private and Public Law Enforcement"; University of Chicago – covers years 1977 to 1995

¹⁷⁷ "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun," by Gary Kleck and Marc Gertz, in *The Journal of Criminal Law & Criminology*, Northwestern University School of Law, Volume 86, Number 1, Fall, 1995

¹⁷⁸ U.S. Bureau of Justice Statistics, "Criminal Victimization in the United States", 1993

¹⁷⁹ Kleck and Gertz, National Self Defense Survey, 1995

¹⁸⁰ National Association of Chiefs of Police, 17th Annual National Survey of Police Chiefs & Sheriffs, 2005

¹⁸¹ Glenn White, president, Dallas Police Association, Dallas Morning News, December 23, 1997

Fact: “I ... [felt] that such legislation present[ed] a clear and present danger to law-abiding citizens by placing more handguns on our streets. Boy was I wrong. Our experience in Harris County, and indeed statewide, has proven my fears absolutely groundless”.¹⁸²

Fact: Explain this to the Law Enforcement Alliance of America, Second Amendment Police Department, and Law Enforcement for the Preservation of the Second Amendment, all of whom support shall-issue concealed carry laws.

¹⁸² John B. Holmes, Harris County Texas district attorney, Dallas Morning News, December 23, 1997

Opinions of the Colorado Supreme Court are available to the public and can be accessed through the Court's homepage at <http://www.courts.state.co.us> Opinions are also posted on the Colorado Bar Association homepage at www.cobar.org

ADVANCE SHEET HEADNOTE
March 5, 2012

2012 CO 17

No. 10SC344, Regents of the University of Colorado v. Students for Concealed Carry on Campus - The Concealed Carry Act's comprehensive statewide purpose, broad language, and narrow exclusions show that the General Assembly intended to divest the Board of Regents of its authority to regulate concealed handgun possession on campus.

The Students for Concealed Carry on Campus filed a complaint against the University of Colorado's Board of Regents and others alleging that the Board's Weapons Control Policy violated the Colorado Concealed Carry Act and the Colorado Constitution's right to bear arms. The trial court dismissed, and the court of appeals reversed.

The supreme court holds that the Concealed Carry Act's comprehensive statewide purpose, broad language, and narrow exclusions show that the General Assembly intended to divest the Board of Regents of its authority to regulate concealed handgun possession on campus. Accordingly, the supreme court agrees with the court of appeals that, by alleging the Policy violates the CCA, the Students for Concealed Carry on Campus have stated a claim for relief. Because the supreme court affirms on statutory grounds, it does not consider the Students' constitutional claim.

Supreme Court of the State of Colorado
101 West Colfax Avenue, Suite 800 • Denver, Colorado 80202

2012 CO 17

Supreme Court Case No. 10SC344
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 09CA1230

Petitioners:

The Regents of the University of Colorado; Stephen Ludwig, in his official capacity as Regent; Joseph Neguse, in his official capacity as Regent; Monisha Merchant, in her official capacity as Regent; Michael Carrigan, in his official capacity as Regent; Tom Lucero, in his official capacity as Regent; Steve Bosley, in his official capacity as Regent; Kyle Hybl, in his official capacity as Regent; James Geddes, in his official capacity as Regent; Tilman Bishop, in his official capacity as Regent; Jim Spice, in his official capacity as Chief of Campus Police, University of Colorado at Colorado Springs; Pam Shockley-Zalabak, in her official capacity as Chancellor, University of Colorado at Colorado Springs; Doug Abraham, in his official capacity as Chief of Campus Police, University of Colorado Denver; and M. Roy Wilson, in his official capacity as Chancellor, University of Colorado Denver,

v.

Respondents:

Students for Concealed Carry on Campus, LLC, a Texas limited liability company; Martha Altman; Eric Mote; and John Davis.

Judgment Affirmed

en banc

March 5, 2012

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JUSTICE EID delivered the Opinion of the Court.

¶1 The Students for Concealed Carry on Campus, LLC, along with Martha Altman, Eric Mote, and John Davis (collectively, the “Students”), filed a complaint against the University of Colorado’s Board of Regents (the “Board of Regents” or “Board”) and others alleging that the Board’s Weapons Control Policy 14-I (“the Policy”) – which prohibits the carrying of handguns on campus by all persons but certified law enforcement personnel – violates the Colorado Concealed Carry Act (“CCA”), §§ 18-12-201 to -216, C.R.S. (2011), and the Colorado Constitution’s right to bear arms, Colo. Const. art. II, § 13. The Board of Regents filed a motion to dismiss under C.R.C.P. 12(b)(5), which the district court granted. The Students appealed, and the court of appeals reversed.

¶2 The court of appeals held that the Students stated a claim for relief because the CCA expressly applies to “all areas of the state.” The court further concluded that the Students had stated a claim for relief under article II, section 13 of the Colorado Constitution, which affords individuals the right to bear arms in self-defense. See Students for Concealed Carry on Campus, LLC v. Regents of the U. of Colo., No. 09CA1230, --- P.3d ---, 2010 WL 1492308, at *7, *11 (Colo. App. April 15, 2010).

¶3 We granted certiorari and now affirm. We hold that the CCA’s comprehensive statewide purpose, broad language, and narrow exclusions show that the General Assembly intended to divest the Board of Regents of its authority to regulate concealed handgun possession on campus. Accordingly, we agree with the court of appeals that, by alleging the Policy violates the CCA, the Students have stated a claim for relief.

Because we affirm on statutory grounds, we do not consider the Students' constitutional claim.

I.

14 The Board of Regents adopted the Policy on March 17, 1994. The Policy prohibits "the possession of firearms . . . on or within any University of Colorado campus, leased building, other area under the jurisdiction of the local campus police department or areas where such possession interferes with the learning and working environment." The only exceptions are for "peace officers or for others who have written permission from the Chief of Police for those campuses which have such an officer or from the Chancellor after consultation with the Chief of Police." Any individual violating the Policy will be banned from campus; if that person is a student, the "minimum disciplinary sanction shall be expulsion." In justifying the Policy, the Board of Regents stated that firearm possession is "inconsistent with the academic mission of the [University of Colorado] and, in fact, undermines it"; "threatens the tranquility of the educational environment in an intimidating way"; and "contributes in an offensive manner to an unacceptable climate of violence."

15 In 2003, citing "widespread inconsistenc[ies] among jurisdictions," the General Assembly enacted the CCA to "occupy the field of regulation of the bearing of concealed handguns" and to "provide statewide uniform standards for issuing permits to carry concealed handguns for self-defense." § 18-12-201(1)(e), (2)(b). Under the CCA, when a permit is issued, the permittee is authorized "to carry a concealed

handgun in all areas of the state, except as specifically limited” by the statute. § 18-12-214(1)(a). One specific limitation prohibits permittees from “carry[ing] a concealed handgun onto the real property, or into any improvements erected thereon, of a public elementary, middle, junior high, or high school.” § 18-12-214(3). Section 18-12-214(3) does not include an exception for the University of Colorado campuses. A “local government” is prohibited from “adopt[ing] or enforc[ing] an ordinance or resolution that would conflict with any provision of [the CCA].” § 18-12-214(1).

¶6

On December 11, 2008, the Students filed a complaint in El Paso County District Court, alleging that the Policy violated the CCA and the Colorado Constitution’s right to bear arms.¹ The complaint asserted that Martha Altman, Eric Mote, and John Davis wanted to possess a handgun when traveling to, from, through, or on the campuses of the University of Colorado for self-defense. Altman contacted the Chief of Police at the University of Colorado Denver requesting permission to carry a concealed weapon on campus, while Mote and Davis contacted the chancellor of the University of Colorado at Colorado Springs requesting the same. Each asserted that they held a valid concealed-carry permit under the CCA. All three requests were denied, with the officials citing to the Policy.

¹ In addition to naming the Board of Regents as a defendant, the complaint named, in their official capacities, the individual regents, the chief of campus police of the University of Colorado at Colorado Springs, the chancellor of the University of Colorado at Colorado Springs, the chief of campus police of the University of Colorado Denver, and the chancellor of the University of Colorado Denver.

¶17 The Board of Regents filed a motion to dismiss arguing that the Students had failed to state a claim for relief, which the district court granted. The court concluded that because the CCA prohibits only “local governments” from adopting or enforcing laws contrary to the CCA, and the Board is not a “local government,” the Board was not divested of authority to regulate concealed handgun possession on campus.

¶18 In addition, the district court found that the right to bear arms is not a “fundamental right” and “can instead be highly restricted by the state’s valid exercise of its police power.” Consequently, the right to bear arms is “not subject to strict constitutional scrutiny,” but is only subject to the “rational basis test” — an inquiry that the Policy “easily pass[es].” The Students appealed, and the court of appeals reversed.

¶19 On the statutory claim, the court of appeals focused on the CCA’s plain language and its desire for statewide uniform standards to conclude that “all areas of the state” includes university campuses. --- P.3d ---, 2010 WL 1492308, at *2-*7. Accordingly, the court held that the Students’ allegations, “when accepted as true, state a claim for relief that the [P]olicy violates the CCA.” Id. at *7. On the constitutional claim, the court noted that the Students had limited their claim’s scope “to the ability to possess a firearm in a motor vehicle when traveling on or through a University of Colorado campus.” Id. On this question, the court concluded that, rather than the rational basis test, a “reasonable exercise” test applied. Id. at *11. Thus the Students’ allegations did state a “claim for relief concerning the ability to carry a firearm in a motor vehicle when travelling on or through a University of Colorado campus.” Id.

¶10 We granted certiorari² and now affirm. We hold that the CCA’s comprehensive statewide purpose, broad language, and narrow exclusions show that the General Assembly intended to divest the Board of Regents of its authority to regulate concealed handgun possession on campus. Accordingly, we agree with the court of appeals that, by alleging the Policy violates the CCA, the Students have stated a claim for relief. Because we affirm on statutory grounds, we do not consider the Students’ constitutional claim.

II.

¶11 We review a trial court’s order granting a motion to dismiss de novo; we accept all factual averments as true and view the allegations in the light most favorable to the plaintiff. Pub. Serv. Co. v. Van Wyk, 27 P.3d 377, 386 (Colo. 2001). A motion to dismiss for failure to state a claim should not be granted unless it appears beyond doubt that no set of facts can prove that the plaintiff is entitled to relief. Id. at 385-86.

¶12 We turn first to the statutory question of whether the CCA divests the Board of its authority to regulate concealed handgun possession on campus. In enacting the CCA, the General Assembly found that jurisdictions were inconsistent in issuing

² We granted certiorari on the following issues:

1. Whether the General Assembly intended the Concealed Carry Act to divest the Board of Regents of its constitutional and statutory authority to enact safety and welfare measures for the University of Colorado’s campuses.
2. Whether a constitutional challenge to a statute or ordinance regulating the right to bear arms is governed by the deferential “rational basis” standard of review or a more stringent “reasonable exercise” standard of review.

concealed-carry permits and in identifying “areas of the state where it is lawful to carry concealed handguns.” § 18-12-201(1)(a), C.R.S. (2011). Instead, the General Assembly found, the criteria and procedures for lawfully carrying a concealed handgun “should be consistent throughout the state to ensure the consistent implementation of state law.” § 18-12-201(1)(d). Moreover, it was “necessary that the state occupy the field of regulation of the bearing of concealed handguns since the issuance of a concealed handgun permit is based on a person's constitutional right of self-protection and there is a prevailing state interest in ensuring that no citizen is arbitrarily denied a concealed handgun permit and in ensuring that the laws controlling the use of the permit are consistent throughout the state.” § 18-12-201(1)(e).

¶13 Based on its findings, the General Assembly concluded that the “permitting and carrying of concealed handguns is a matter of statewide concern,” and, therefore, “[i]t is necessary to provide statewide uniform standards for issuing permits to carry concealed handguns for self-defense.” § 18-12-201(2)(a)-(b), C.R.S. (2011). Accordingly, the General Assembly enacted the comprehensive scheme known as the CCA. See §§ 18-12-201 to -216.

¶14 To bring about its “statewide uniform standards,” the General Assembly declared that “[a] permit to carry a concealed handgun authorizes the permittee to carry a concealed handgun in all areas of the state, except as specifically limited in [section 18-12-214].” § 18-12-214; see also § 18-12-204 (“A permit issued pursuant to [the CCA] . . . is effective in all areas of the state, except as otherwise provided in section 18-12-

214.”). Further, a “local government” is prohibited from “adopt[ing] or enforc[ing] an ordinance or resolution that would conflict with any provision of [the CCA].” § 18-12-214(1)(a).³

¶15 The exclusions to the CCA – areas of the state where a CCA permit is “specifically limited” under section 18-12-214 – prohibit the carrying of a concealed handgun (1) into a place where the carrying of handguns is prohibited by federal law; (2) onto the real property “of a public elementary, middle, junior high, or high school” except in enumerated circumstances; and (3) into a public building at which security personnel and devices screen each entrant for weapons and subsequently the security personnel require any weapons to be left in their possession while the entrant is in the building. § 18-12-214(2)-(4). Although the General Assembly expressly listed other educational institutions as excluded from the CCA, it did not place the University of Colorado campuses on the list. See § 18-12-214(3). In addition, the CCA does not limit, restrict, or prohibit any rights that a “private property owner, private tenant, private employer, or private business entity” may have to exclude handguns. § 18-12-214(5).

¶16 The Board of Regents is granted broad authority by both the Colorado Constitution and statutes. The Colorado Constitution vests the Board with “the general

³ Similarly, section 18-12-201 prohibits sheriffs from further regulating or restricting the issuance of permits. “An action or rule [1] that encumbers the permit process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in [the CCA] or [2] that creates restrictions beyond those specified in [the CCA] is in conflict with the intent of [the CCA] and is prohibited.” § 18-12-201(3).

supervision of [its] respective institutions and the exclusive control and direction of all funds of and appropriations to [its] respective institutions, unless otherwise provided by law.” Colo. Const. art. VIII, § 5. The General Assembly has authorized the Board to “enact laws for the government of the university,” § 23-20-112(1), C.R.S. (2011), and to “promulgate rules and regulations for the safety and welfare of students, employees, and property,” § 23-5-106(1), C.R.S. (2011). It is pursuant to this authority that the Board adopted and enforced the Policy.

¶17 The Board argues that the CCA does not divest it of its authority to adopt and enforce the Policy. The Board asserts that it holds special, constitutional authority to enact policies governing the University of Colorado. Pointing to article VIII, section 5’s phrase “unless otherwise provided by law,” the Board contends that the CCA does not “provide by law” that the authority has been divested in this instance. Instead, it argues that such divestment must be done expressly, which, it contends, was not done in the case. The Board also points out that the CCA only prohibits “local governments,” a phrase that would not include the University of Colorado, from adopting or enforcing laws that conflict with the CCA.

¶18 We disagree with the Board. Instead, the CCA’s comprehensive statewide purpose, broad language, and narrow exclusions lead us to conclude that the General Assembly divested the Board of Regents of its authority in this instance. In other words, under article VIII, section 5 of the Colorado Constitution, the CCA “otherwise provide[s] by law.”

¶19

In its legislative declaration, the General Assembly makes clear that the CCA is meant to be a statewide comprehensive scheme. The General Assembly found it “necessary that the state occupy the field of regulation of the bearing of concealed handguns.” § 18-12-201(1)(e). Further, the General Assembly found that the “permitting and carrying of concealed handguns is a matter of statewide concern,” and that therefore “[i]t is necessary to provide statewide uniform standards.” § 18-12-201(2)(a)-(b).

¶20

The CCA achieved its intent to bring about “statewide uniform standards” through its substantive provisions. Twice the CCA expressly states that, except as limited by the CCA itself, a permit to carry a concealed handgun authorizes the permittee to carry a concealed handgun “in all areas of the state.” § 18-12-204(1)(b) (emphasis added); § 18-12-214(1)(a) (emphasis added). Further, the CCA’s exclusions – “specifically” noted under section 18-12-214 – are narrow and do not include public universities. Relevant here, the CCA expressly excludes public elementary, middle, junior high, and high schools, but not public universities. § 18-12-214(3). We agree with the court of appeals that, “[h]ad the legislature intended to [exclude] universities, it knew how to do so.” Students for Concealed Carry, --- P.3d ---, 2010 WL 1492308, at *4; see also Beeghly v. Mack, 20 P.3d 610, 613 (Colo. 2001) (citing the interpretive canon expressio unius exclusio alterius – “the inclusion of certain items implies the exclusion of others” – and concluding that because the legislature had included a particular

remedy in one statute but not in another, the legislature could not have intended the particular remedy in the latter).

¶21 In fact, when it enacted the CCA, the General Assembly amended a related criminal statute that applies to universities expressly. S. 03-24, 64th Leg., 1st Sess. (Colo. 2003); § 18-12-105.5(1), C.R.S. (2011) (making it a class six felony to carry a deadly weapon onto real estate of “any public or private elementary, middle, junior high, high, or vocational school or any public or private college, university, or seminary” (emphasis added)). Moreover, the amended language in the criminal statute actually directs the reader back to the CCA’s school exclusion, where universities are notably absent. § 18-12-105.5(d.5).

¶22 Our conclusion is not changed by the fact that “local governments” are expressly prohibited from “adopt[ing] or enforc[ing] an ordinance or resolution that would conflict with any provision of [the CCA].” § 18-12-214(1)(a). Although the Board is not typically considered a “local government,” see § 24-32-102, C.R.S. (2011) (defining a “local government” as “all municipal corporations, quasi municipalities, counties, and local improvement and service districts of this state”), the CCA is clear that a permittee is authorized to carry a concealed handgun in “all areas of the state, except as specifically limited” by the statute, § 18-12-214(1)(a) (emphasis added). As explained above, the University of Colorado campuses are not included in those “specifically limited” areas. The fact that “local governments” are expressly prohibited from adopting provisions that conflict with the CCA does not take away from the fact that a

permittee is authorized to carry a concealed handgun in “all areas of the state, except as specifically limited” by the statute. Instead, the prohibition on local governments merely reinforces the scope of the “all areas of the state” provision. To put it differently, even if the Board of Regents is not considered a “local government,” the Policy would still conflict with the CCA’s clear command that a permittee is authorized to carry a concealed handgun in “all areas of the state, except as specifically limited” by the statute.

¶23

Our conclusion that the General Assembly divested the Board of Regents of its authority in this instance is further supported by our caselaw. The Board contends that this case should be governed by Associated Students v. Regents of the University of Colorado, 189 Colo. 482, 543 P.2d 59 (1975), superseded by statute, § 24-6-402(1)(d), C.R.S. (2011), and Uberoi v. University of Colorado, 686 P.2d 785 (Colo. 1984), superseded by statute, § 24-72-202(1.5), C.R.S. (2011). We disagree and instead find that Ramos v. Regents of the University of Colorado, 759 P.2d 726 (Colo. 1988), provides the proper analytical framework in this case.

¶24

In Associated Students, we were tasked with determining whether the Open Meetings Law of the Colorado Sunshine Act of 1972 – which applied to “[a]ll meetings of two or more members of any board . . . or other policy-making or rule-making body of any state agency or authority . . . except as may be otherwise provided in the constitution” – divested the Board of its authority to hold executive meetings closed to the public. 189 Colo. at 484, 543 P.2d at 60-61 (emphasis added). We concluded the

constitutional phrase “unless otherwise provided by law” allows the Board’s authority to be divested only “when a legislative enactment expressly so provides.” 189 Colo. at 485, 543 P.2d at 61. And “the [Sunshine] Act contain[ed] no such language.” 189 Colo. at 485, 543 P.2d at 62. We did not discuss the effect of the Sunshine Act’s limiting clause, which limited the act to all meetings “except as may be otherwise provided in the constitution.”

¶25 A decade later, we addressed a similar question in Uberoi, where we considered whether the Open Records Act divested the Board of its authority to keep certain records confidential. 686 P.2d at 786-87. Like the Sunshine Act in Associated Students, the Open Records Act was broadly worded and included a limiting clause. The act provided that “all public records shall be open for inspection by any person at reasonable times . . . except . . . as otherwise specifically provided by law.” Id. at 788 (emphasis added). Using the same rationale as Associated Students, we concluded that the relevant provisions of the Open Meetings Law did not divest the Board of Regents of its authority. Id. at 788-89. We noted that “the specific supervisory control over the university granted to the [Board] can be divested only by a legislative enactment expressly so providing.” Id. at 788. And the Open Records Act “nowhere specifically refers to the [University of Colorado] nor to governing bodies of educational institutions.” Id. at 788 (quoting trial court opinion).

¶26 Finally, we revisited the issue of the Board’s authority in Ramos. In that case, we considered whether a civil rights statute divested the Board of Regents of its authority

over certain employment discrimination matters, instead placing such authority in the Colorado Civil Rights Commission. Ramos, 759 P.2d at 727. The statutory scheme covered “employers,” which included “the state of Colorado or any political subdivision, commission, department, institution, or school district thereof, and every other person employing persons within the state,” except for certain religious institutions. Id. at 729. The Board argued, similar to its argument here, that the statutory scheme failed to explicitly identify the university as an “employer,” and therefore, under Associated Students and Uberoi, the statutory scheme did not divest it of authority. Id. We rejected the Board of Regents’ argument, finding that the General Assembly meant to include the university in the statutory scheme.

¶27

We noted that the statutory scheme applied on a “statewide basis,” id. at 731, and was “comprehensive,” id. at 732. We found “especially significant” the “breadth of language used by the General Assembly in defining the word ‘employer.’” Id. at 731. Further, we noted that the General Assembly “expressly exclude[d] from the definition [of ‘employer’] certain religious organizations and associations but no other category of employer.” Id. We thought it would make little sense for the General Assembly to define “employer” so broadly and set forth the Act’s only exclusion expressly, yet still intend to exclude the university. Id. at 731. Accordingly, we held that “the supervisory autonomy of the Regents must yield” to the statutory scheme. Id. at 735.

¶28

Importantly, we distinguished Associated Students and Uberoi on the ground that the statutes in those cases contained a limiting clause, whereas the statutory

scheme in Ramos did not. Id. at 733-34. As noted above, the Sunshine Act in Associated Students applied to all meetings “except as may be otherwise provided in the constitution,” 189 Colo. at 484, 543 P.2d at 60-61, and the Open Records Act in Uberoi applied to all records “except . . . as otherwise specifically provided by law,” 686 P.2d at 788. In both cases, the legislature had included statutory language that arguably preserved the Board’s preexisting statutory and constitutional authority to adopt policies governing the university. It therefore made sense in those cases to conclude that, in the absence of express statutory language directed toward the Board’s authority, its preexisting authority was preserved. See Associated Students, 189 Colo. at 485, 543 P.2d at 62 (noting that, because of the presumption against implied repeals, the court would not hold that the Sunshine Act impliedly repealed the Board’s preexisting statutory and constitutional authority to govern university affairs); Uberoi, 686 P.3d at 787-89 (applying this reasoning to the Open Records Act).

¶29

By contrast, we concluded that the statutory scheme in Ramos – which not only lacked a limiting clause, but also contained a comprehensive statewide purpose, broad language, and narrow exclusions – did not permit the conclusion that the legislature had preserved the Board’s preexisting authority. 759 P.2d at 733-34; see also City of Littleton v. State, 855 P.2d 448, 454 (Colo. 1993) (holding that, under Ramos, a statutory scheme with broad purposes that applied to “any public or private user” applied to the State Community Colleges Board). Like the statutory scheme at issue in Ramos, the CCA lacks a limiting clause, and as discussed above contains a statewide purpose,

broad language, and narrow exclusions. Consequently, we hold that, as in Ramos, the CCA does not permit the conclusion that the Board's preexisting authority to regulate concealed handgun possession was preserved.⁴

¶30 In sum, we hold that the CCA divested the Board of Regents of its authority to regulate concealed handgun possession on campus. Accordingly, we agree with the court of appeals that, by alleging the Policy violates the CCA, the Students have stated a claim for relief. Because we affirm on statutory grounds, we do not consider the Students' constitutional claim.⁵

III.

¶31 For the reasons set forth above, we affirm the court of appeals on the ground that the Students have stated a claim for relief by alleging that the Policy violates the CCA, and remand the case for further proceedings consistent with this opinion.

⁴ On the same ground, we do not find persuasive the Attorney General Opinion issued on June 17, 2003, which concluded that the Board had not been divested of its authority because the language of the CCA was not express.

⁵ The Students conceded in their brief and at oral argument that we need not reach the constitutional question if we recognized their statutory right to carry a concealed weapon under the CCA.

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON FIREARMS EDUCATIONAL
FOUNDATION, an Oregon nonprofit
corporation,

Petitioner,

v.

OREGON STATE BOARD OF HIGHER
EDUCATION and OREGON
UNIVERSITY SYSTEM,

Respondents.

CA A142974

PETITIONER'S REPLY BRIEF

Judicial Review of Administrative Rule of the Oregon State Board of Higher
Education, amending OAR 580-022-0045(3), adopted January 18, 1991, and
effective January 31, 1991.

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August 2010

INDEX OF CONTENTS OF BRIEF

	PAGE
SUMMARY OF ARGUMENTS.....	1
ARGUMENT.....	1
REPLY TO RESPONSE TO FIRST ASSIGNMENT OF ERROR	1
A. Conflict with, and circumvention of, the effect, intent and policy of legislation.....	1
B. Board exceeded statutory authority in promulgating rule as broad as OAR 580-022-4405(3).....	3
1. ORS 351.070 is sole statutory authority which may be considered.....	3
2. ORS 351.070 does not grant authority to promulgate broad rule.....	4
REPLY TO RESPONSE TO SECOND ASSIGNMENT OF ERROR.....	5
A. ORS 166.170(1) preempts OAR 580-022-0045(3).....	6
B. ORS 166.170(2) preempts OAR 580-022-0045(3).....	10
REPLY TO RESPONSE TO THIRD ASSIGNMENT OF ERROR.....	13
CONCLUSION.....	15

INDEX OF AUTHORITIES

	PAGE
CASES	
<i>Advocates for Effective Regulation v. City of Eugene</i>	
160 Or App. 292, 981 P2d 368 (1999).....	8
<i>AFSCME Local 2623 v. Dept. of Corrections</i>	
315 Or 74, 843 P2d 409 (1992).....	13
<i>District of Columbia v. Heller</i>	
___ US ___, 128 S Ct 2783, 171 L Ed 2d 637 (2008).....	13, 14
<i>Dunn v. State University</i>	
9 Or 357 (1881).....	11
<i>Jane Doe v. Medford School Dist. 549C</i>	
232 Or App 38, 221 P3d 787 (2009).....	5, 6, 7, 9, 12
<i>Kleinsorge v. Reid</i>	
221 Or 558, 352 P2d 466 (1960).....	11
<i>LaGrande/Astoria v. PERB,</i>	
281 Or 137, 576 P2d 1204 (1978).....	3
<i>Ligget v. Ladd</i>	
23 Or 26, 31 P. 81 (1892).....	11
<i>McDonald v. City of Chicago</i>	
561 U.S. ___ (June 28, 2010).....	13
<i>Pacific States Marine Fisheries Commission v. Department of Revenue</i>	
346 Or 117, 206 P3d 1037 (2009).....	11, 12
<i>PGE v. Bureau of Labor and Industries</i>	
317 Or 606, 859 P2d 1143 (1993).....	12
<i>Starrett v. City of Portland</i>	
196 Or App 534, 102 P3d 728 (2008).....	7

<i>State v. Gaines</i>	
346 Or 160, 206 P3d 1042 (2009).....	12
<i>Students for Concealed Carry on Campus, LLC, et al. v. The Regents of the University of Colorado, et al.</i>	
No.09CA1230 (Colo. App. 2010).....	10

STATUTES

ORS 166.170.....	1, 5, 6, 7, 9, 10, 11, 12, 13, 14
ORS 166.291.....	14
ORS 166.360.....	1, 3
ORS 166.370.....	1, 2, 3, 12, 14
ORS 174.010.....	6
ORS 183.400.....	1, 3, 4, 8, 13
ORS 294.....	11
ORS 297.....	11
ORS 351.060.....	4, 7, 8, 11
ORS 351.070	1, 3, 4, 5, 8, 9, 15
ORS 351.140.....	11

ADMINISTRATIVE RULES

OAR 580-022-0045.....	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15
-----------------------	---

UNITED STATES CONSTITUTION

Second Amendment.....	1, 13, 14
Fourteenth Amendment.....	13

SUMMARY OF ARGUMENTS

OAR 580-022-0045(3) is incompatible with the legislative policy of ORS 166.370. Additionally, the Board only invoked ORS 351.070 as the statutory authority to promulgate their rule. Due to the limited nature of review provided under ORS 183.400, only ORS 351.070 may be contemplated. ORS 351.070 did not grant the Board the authority to promulgate a rule as broad as OAR 580-022-0045(3).

The statutory authority invoked to promulgate OAR 580-022-0045(3) grants the Board the authority to regulate. It was under the authority to regulate, and not under some “proprietary” interest, by which the Board promulgated OAR 580-022-0045(3). Therefore, the rule is subject to the preemptive effect of ORS 166.170(1).

Finally, the United States Supreme Court has applied the Second Amendment right to bear arms to the states. Further, this court’s review may go beyond the face of the rule and extend to the law pertinent to the rule as well. The law pertinent to OAR 580-022-0045(3) demonstrates that the rule has no government interest.

ARGUMENT

REPLY TO RESPONSE TO FIRST ASSIGNMENT OF ERROR

A. Conflict with, and circumvention of, the effect, intent and policy of legislation.

In 1969 the Legislative Assembly passed into law ORS 166.370 which prohibited the possession of firearms while in or on a public building. ORS 166.370(1).¹ A “public building” expressly included any public school, college or university. ORS 166.360(4). However, the Legislature also created an express

¹ The pertinent portions of the current versions of ORS 166.370 and 166.360 continue to use substantially the same language as they did in 1969.

exception to the criminal penalties imposed by this law by stating that, the law does not apply to individuals licensed to carry concealed handguns. ORS 166.370(3)(d).

Regardless of how they are characterized, the 1989 legislative changes to ORS 166 had the intent and effect of permitting a substantially larger population of individuals to obtain concealed handgun licenses and be able to legally carry firearms on university campuses. In making the change to their own policy in 1991, the Board expressly recognized the above described effect of the legislative changes to ORS 166, and deliberately identified that their intent in promulgating OAR 580-22-0045(3) was to circumvent such legislative effect. Indeed, the Board specifically stated that:

“The 1989 Legislature eliminated criminal penalties for possession of concealed weapons by those licensed to carry concealed handguns. Because of the wording of the Board’s Rule, this allowed holders of concealed weapons licenses to bring them on campus or institutionally controlled property. The proposed amendment would reinstate the Board’s previous policy, prohibiting firearms on campus, with certain exceptions.” ER 8.

Respondents now assert that Petitioner did not demonstrate that the Legislature’s failure to criminalize the carrying of permitted concealed weapons indicates its intent to require state agencies to allow permitted concealed weapons in public buildings. Respondents’ Brief at 8. This argument is a mischaracterization of the issue. The legislation clearly stands for much more than a failure to criminalize and the Legislature did not simply forget to address the issue, as Respondents would have us believe. Rather, the Legislature created criminal penalties for carrying a firearm in or on a “public building” and then specifically created an express exception to those criminal penalties for individuals with concealed handgun licenses. APP 2-1,

2-2; ORS 166.360; ORS 166.370. It is evident that when a governing body makes an activity illegal but also creates a specific exception to allow certain people to engage in that activity, that such activity is intended to be legal and permitted for those who fit under that exception.

Indeed, the exception created by the Legislature in ORS 166.370(3)(d) demonstrates their direct contemplation of the issue and embodies their intentional policy that those with concealed handgun licenses be permitted to carry firearms in “public buildings”, including colleges and universities. Respondents themselves point out that an administrative rule is in conflict with state law when it is incompatible with the legislative policy. Respondents’ Brief at 9; *LaGrande/Astoria v. PERB*, 281 Or 137, 576 P2d 1204 (1978). As such, Respondents’ argument fails because OAR 580-022-0045(3) is incompatible with the legislative policy of ORS 166.370.

B. Board exceeded statutory authority in promulgating rule as broad as OAR 580-22-4405(3).

The Board did not assert, or have, the statutory authority to promulgate a rule as broad as OAR 580-022-0045(3).

1. ORS 351.070 is the sole statutory authority which may be considered

The Board cited only ORS 351.070 as the sole statutory authority invoked to promulgate OAR 580-022-0045(3). ER-3, ER-4, ER-6, ER-7. Due to the limited nature of this proceeding, the court should not look beyond ORS 351.070 when contemplating the Board’s statutory authority to promulgate OAR 580-022-0045(3).

Specifically, Petitioner has sought judicial determination of the validity of a specific administrative rule under ORS 183.400. That statute dictates that judicial

review of the rule shall be limited to an examination of (1) the rule itself, (2) the statutory provision which authorized the rule, and (3) documents necessary to demonstrate compliance with rule making procedures. ORS 183.400. Therefore, in this challenge of the validity of OAR 580-002-0045(3) the court is required to only look to the specific statutory authority which the Board actually invoked in promulgating the rule.

Respondents accuse Petitioner of ignoring any authority of the Board to manage university property under ORS 351.060. Respondents' Brief at 8. However, the Board did not invoke any authority under ORS 351.060 throughout the formally required steps for the promulgation of the rule. ER-3, ER-4, ER-6, ER-7. Therefore, any authority under ORS 351.060 may not be considered in this proceeding.

2. ORS 351.070 does not grant authority to promulgate broad rule

The 1989 version of ORS 351.070, which was the Board's sole invoked statutory authority, provided that the Board "for each institution, division and department under its control, shall:...adopt rules and bylaws for the government thereof, including the faculty, teachers, students and employees therein." APP 1-2. Respondents attack Petitioner's interpretation of this statutory provision based on their understanding of the term "including."

In the 1989 version of ORS 351.070(2)(b), the term "including" is used on a lower level of the sentence structure than that recognized by Respondents. Meaning that the preceding words of the statute itself has limited the scope of what the term "including" may encompass. The statute only addresses the Board's authority to adopt rules and bylaws limited to the "institutions, divisions, and departments under

its control” and reads on to state that this includes the “faculty, teachers, students and employees **therein**”.² Use of the term “therein” is a reference back to the institutions, divisions and departments and serves to limit the scope of the rule to encompass only those things or persons within the previously referenced institutions, divisions and departments. Use of the term “therein” prohibits one from reading the statute to say that the Board may adopt rules and bylaws applicable to “any person”, as OAR 580-022-0045(3) does.

The best reading of the statute is that the Board is granted the authority to adopt rules for the government of institutions, divisions and department under its control “including” all of the parts within those institutions divisions and departments (administration, funds, admissions, tuition, curriculum, accreditation, degrees, records, athletics, etc.). One such part “included” in the institutions, divisions and departments is the group of people specified in the statute. The specific listing of “faculty, teachers, students and employees therein” demonstrates the Legislature’s intended limitation on the scope of the Board’s authority after the Legislature had contemplated how far they would like the Board to be able to reach.

REPLY TO RESPONSE TO SECOND ASSIGNMENT OF ERROR

This court expressly stated that ORS 166.170(1) has a preemptive effect independent from ORS 166.170(2). *Jane Doe v. Medford School Dist. 549C*, 232 Or App 38, 61, 221 P3d 787 (2009). Therefore, it is important that both provisions of the statute be the subject of a distinct analysis in order to ascertain each provision’s independent effect.

² Respondents’ quotation of ORS 351.070(2)(b) omits the word “therein” which in turn substantially changes the reading of the statutory provision.

A. ORS 166.170(1) preempts OAR 580-022-0045(3).

First, Respondents seek to limit the scope of ORS 166.170(1) to the class of entities specified in ORS 166.170(2). Respondents' Brief at 17. However, as noted above, ORS 166.170(1) has a preemptive effect independent from ORS 166.170(2). If the Legislature wanted ORS 166.170(1) and (2) to have an identical limited scope then there would be no need for two separate provisions. In the construction of a statute, where there are several provisions or particulars, such construction is, if possible, to be adopted as will give effect to all. ORS 174.010. ORS 166.170(1) has a broader preemptive provision than ORS 166.170(2) and it should therefore be adopted in a manner that will give full effect to its broader preemptive intent.

Further, Respondents have provided no evidence for their assertion that the legislature intended to limit the scope of ORS 166.170(1) to the entities specified in ORS 166.170(2). Respondents offer a misleading quotation from *Jane Doe v. Medford School Dist 549C* in support of their proposition. Respondents' Brief at 16. However, Respondents omit portions of the quotation, having the effect of drastically changing the meaning of the court's statements. The quotation offered by Respondents stated: "[w]e have found nothing in that legislative history suggesting that the legislature intended the scope of its declaration of preemption in ORS 166.170(1) to reach more broadly..." Respondents' Brief at 16. Respondents imply that the "more broadly" language refers to ORS 166.170(2). The complete quotation reveals this to be misleading. The complete quotation reads as follows:

"[w]e have found nothing in that legislative history suggesting that the legislature intended the scope of its declaration of preemption in ORS 166.170(1) to

reach more broadly **to such things as internal employment policies and management directives.**”

(Emphasis added). *Jane Doe v. Medford School Dist.* 549C, 232 Or App at 59.

Respondents conveniently omit language, thus giving the quotation a meaning that it otherwise does not really have. The quotation, in context, demonstrates that the court was simply saying that ORS 166.170(1) is not so broad as to reach such things as employment policies and management directives. In using the phrase “more broadly” the court was not making a comparison to ORS 166.170(2).

As explained below, because the Board has been delegated the authority to regulate, it fits precisely within the class of entities to which the preemptive effect of ORS 166.170(1) was intended to apply. It is evident from the title and text of ORS 166.170(1) that the Legislative Assembly intended to reserve the exclusive “authority to regulate” firearms. As such, ORS 166.170(1) is violated when another entity, without express authority, attempts to “regulate” firearms. A “regulation” is a law or rule enacted under the “organic authority as a governmental entity.” *Jane Doe v. Medford School Dist.* 549C, 232 Or App at 57; See also *Starrett v. City of Portland*, 196 Or App 534, 102 P3d 728 (2008).

Respondents argue that the promulgation of OAR 580-022-0045(3) was not a regulation brought about by the Board under their “organic authority as a governmental entity”. Respondents’ Brief at 17. Rather, the Respondents attempt to cast the Board’s actions as “proprietary” in nature, of which the claimed authority comes from ORS 351.060. Respondents’ Brief at 17. However, Respondents fail to

recognize that their argument does not align with the statutory authority which the Board actually invoked to promulgate OAR 580-022-0045(3).

As noted previously, ORS 183.400, under which the present request for judicial determination was commenced, dictates that judicial review of the rule shall be limited to an examination of (1) the rule itself, (2) the statutory provision which authorized the rule, and (3) documents necessary to demonstrate compliance with rule making procedures. Therefore, in this challenge of the validity of OAR 580-002-0045(3), the court must look only to the statutory authority actually invoked during the promulgation of the rule, that being ORS 351.070. ER-3, ER-4, ER-6, ER-7. Contrary to Respondents' arguments, the Board never invoked, or even referenced, the statutory authority under ORS 351.060 throughout the promulgation of OAR 580-022-0045(3). ER-3, ER-4, ER-6, ER-7. Therefore, Respondents cannot now legitimately argue, close to 20 years later, that they promulgated OAR 580-022-0045(3) pursuant to some "proprietary" statutory authority contained in ORS 351.060.

OAR 580-002-0045(3) is tied directly to only the statutory authority provided in ORS 351.070. The relevant portions of both the 1989 and current versions of ORS 351.070, state that "the board, for each institution, division and department under its control...[(b) Shall] **adopt rules and bylaws** for the **government** thereof, including the faculty, teachers, students and employees therein." (Emphasis added) APP 1-2; ORS 351.070. The ability to **adopt rules and bylaws** for the **government** of an entity and/or group of people is synonymous with the ability to regulate. To "regulate" means to "bring under the control of law or constituted authority."

Advocates for Effective Regulation v. City of Eugene, 160 Or App 292, 308, 981 P.2d

368 (1999). In granting the Board the power to **adopt rules and bylaws** for the **government** of its institutions, the legislature has undoubtedly delegated “regulatory authority” to the Board as a government entity.

The Board specifically invoked the regulatory authority granted to them in ORS 351.070, and in promulgating OAR 580-022-0045(3) under that regulatory authority, the Board enacted the rule under the Board’s “organic authority as a governmental entity.” As identified by this court, the preemptive effect of ORS 166.170(1) was intended to target laws and rules which were enacted by entities acting on their “organic authority as a governmental entity.” See *Jane Doe v. Medford School Dist. 549C*, 232 Or App at 57. In other words the statute limits the regulatory authority delegated to the entity by the legislature. Therefore, ORS 166.170(1) limits the regulatory authority delegated to the Board by the Legislature, resulting in the preemptive effect of ORS 166.170(1) upon OAR 580-002-0045(3).

The above analysis cooperates seamlessly with the legislative intent of ORS 166.170(1). As this court recognized in *Jane Doe v. Medford School District 549C*, the Legislature was intent on addressing the patchwork of existing firearms regulations and protecting a citizen’s right to carry firearms in a law-abiding fashion. 232 Or App at 57-58. The Legislature intended to establish one law so that honest, law-abiding citizens could travel throughout the state without unknowingly violating firearms restrictions. *Id. at 57-60*. OAR 580-002-0045(3) is precisely the sort of inconsistent firearms regulation which the Legislature intended to preempt.

Indeed, courts in other jurisdictions have held that state firearms laws, with similar legislative policies, apply to colleges and universities and their rules and

regulations. In *Students for Concealed Carry on Campus, LLC, et al. v. The Regents of the University of Colorado, et al.*, the Colorado Court of Appeals held that the Colorado Concealed Carry Act (CCA) applied to the University of Colorado. No.09CA1230 (Colo. App. 2010). The CCA specifically states that “A local government does not have authority to adopt or enforce an ordinance or resolution that would conflict with any provision of [the CCA].” *Id.* The court noted that, in enacting the CCA, the Legislature declared that:

“[t]here exists a widespread inconsistency among jurisdictions within the state with regard to ...identification of areas of the state where it is lawful to carry concealed handguns; This inconsistency among jurisdictions creates public uncertainty regarding the areas of the state in which it is lawful to carry concealed handguns.” *Id.*

The university argued that the statutory language did not apply to them because they are an arm of the state and not a “local government.” *Id.* However, in holding that the statute did apply to the university, the Court stated that the university’s position does not comport with the legislature’s intent to have the state occupy the field of regulation of the bearing of concealed handguns and ensure that the laws controlling the use of the permit are consistent throughout the state. *Id.* Similarly, in the present case, the Board’s argument that it is not a “local government”, and therefore it does not fall under the preemptive effect of ORS 166.170(1), does not comport with the Legislature’s intent to reserve the sole authority to regulate firearms.

B. ORS 166.170(2) preempts OAR 580-022-0045(3).

Respondents argue that they are not in the class of entities for whom ORS 166.170(2) was meant to restrict, specifically municipal corporations or districts.

Respondents' Brief at 10. As an initial matter, the Supreme Court of Oregon has stated that the question of whether an entity is a corporation for the purposes of one rule does not speak to whether it is a corporation within the meaning of some unrelated rule. *See Pacific States Marine Fisheries Commission v. Dept. of Revenue*, 346 Or 117, 122, 206 P3d 1037 (2009). As such, Respondents' proffered definitions and analysis from other, unrelated, statutes and sources offer no constructive insight into whether the Board is a corporation under ORS 166.170(2). This includes Respondents' attempt to read-in characteristics such as the power to tax, police power and plenary powers derived from unrelated statutes such as ORS 294 and ORS 297.

Instead, following the process recently employed by the Oregon Supreme Court, this court must first apply basic principles to determine whether the Board is a corporation. *See Pacific States Marine Fisheries Commission v. Dept. of Revenue*, 346 Or at 123-125. The basic principles used to determine if an entity is a corporation include asking whether the entity can sue and be sued, whether the entity can enter into contracts, whether the entity can accept and transfer title to land, and whether the entity has a perpetual existence. *Dunn v. State University* 9 Or 357 (1881); *Pacific States Marine Fisheries Commission v. Dept. of Revenue*, 346 Or at 123-125. The Board, as head of the Department of Higher Education, is a public corporation because it can sue or be sued, enter into contracts, own property and it has a perpetual existence. *See* ORS 351.140; *See also* ORS 351.060; *See also Kleinsorge v. Reid*, 221 Or 558, 564, 352 P2d 466 (1960). Based on these same principles, the Supreme Court has previously held the Board's predecessors to be public corporations. *See Dunn v. State University*, 9 Or at 361; *See also Liggett v. Ladd*, 23 Or 26, 45, 31 P. 81 (1892).

Next, this court must seek to determine if the Board was an entity to which the Legislature intended the preemptive effect of ORS 166.170(2) to apply. *See Pacific States Marine Fisheries Commission v. Dept. of Revenue*, 346 Or at 123-125. The intent of the legislature can be ascertained by examining both the text and context of the statute, along with any relevant legislative history, and, if necessary relevant canons of statutory construction. *State v. Gaines*, 346 Or 160, 171-173, 206 P.3d 1042 (2009); *PGE v. BOLI*, 317 Or 606, 610-612, 859 P.2d 1143 (1993).

In enacting ORS 166.170 the Legislature intended to enact a broad preemption statute designed to address the patchwork of existing firearms restrictions and to protect a citizen's right to carry firearms in a law-abiding fashion. *Jane Doe v. Medford School Dist. 549C*, 232 OrApp at 45, 57-58. Specifically, the statute was designed so that honest, law-abiding citizens could travel throughout the state without unknowingly violating firearms restrictions. *Id.* at 57-60. As such, the gun bill was intended to prohibit other entities from establishing their own gun control regulations, instead leaving it up to the Legislature. *Id.* at 58. OAR 580-022-0045(3), as it applies to "any person", is precisely the sort of firearm restriction which made up the patchwork of restrictions for which the Legislature intended ORS 166.170 to preempt. Therefore, entities maintaining such inconsistent patchwork restrictions, such as the Board, were intended to be subject to the preemptive effect of ORS 166.170(2).

Further, other portions of ORS chapter 166 express the Legislature's intention that those with a concealed handgun license be permitted to carry firearms in or on "public buildings", including colleges and universities. ORS 166.370. Due to the continued existence of that statutory policy, amidst the adoption of ORS 166.170, it

must be assumed that the Legislature intended to continue to give effect to that statutory policy. If government entities such as the Board, whose grant of authority encompasses “public buildings”, were not within the scope of the preemptive effects ORS 166.170(2) then the full effect of other statutory provisions would not be fulfilled. Pursuant to the above analysis, it is clear that the Board is a corporation to which the Legislature intended the preemptive effect of ORS 166.170(2) to apply.

REPLY TO RESPONSE TO THIRD ASSIGNMENT OF ERROR

In *McDonald v. City of Chicago*, the United States Supreme Court recently held that the Second Amendment right to bear arms applies to the states through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. ____ (June 28, 2010). The Supreme Court unequivocally reinforced that the Second Amendment protects an individual’s right to keep and bear arms for the purpose of self-defense, and that self-defense is the central component of the right itself. *Id.*; *See also District of Columbia v. Heller*, ____ U.S. ____, 128 S Ct 2783, 171 L Ed 2d 637 (2008). The Supreme Court also made it abundantly clear that the Second Amendment right to keep and bear arms for self-defense, as contained in the Bill of Rights, is a fundamental right. *McDonald v. City of Chicago*, 561 U.S. ____ (June 28, 2010).³

In applying the *McDonald* holding to OAR 580-022-0045(3), this court’s review is not subject to the standard employed for a strictly facial challenge, as asserted by Respondents. Judicial review under ORS 183.400 is “limited to the face of the rule and the law pertinent to it.” *AFSCME Local 2623 v. Dept. of Corrections*, 315 Or 74, 79, 843 P2d 409 (1992). That standard clearly allows the court’s review to

³ The holding of *McDonald*, when read in its entirety, clearly characterizes a broad fundamental right and in no way limits the Second Amendment to the **home**.

go beyond the face of the rule and extend to the law pertinent to the rule as well. This is a vital distinction in this case because the law pertinent to the rule is instructive of the state's interest, or lack thereof, for creating such a rule.

As seen when analyzing the laws pertinent to OAR 580-002-0045(3), there is no government interest for the rule because it directly conflicts with the actual, expressly stated, government interest. The Legislature has already extensively explored and expressly stated the government's interests in the areas of concealed handguns licenses and firearms on university campuses. *See* ORS 166.170; *See also* ORS 166.291; *See also* ORS 166.370. OAR 580-022-0045(3), despite any possible justification for it, expressly contradicts the government interests expressly codified by the Legislature. Though the strict scrutiny review is usually applied relating to fundamental rights, OAR 580-022-0045(3) is incapable of passing any standard of review because, as explained above, there is no government interest for the rule.

Respondents' assertion that OAR 580-022-0045(3) is presumptively lawful is not a persuasive argument. There is no legal basis for any such legal presumption. It is true that the court in *Heller* recognized that the Second Amendment does not allow an individual to carry a weapon in any manner whatsoever for whatever purpose, and even referenced restrictions on carrying firearms in sensitive places. *District of Columbia v. Heller*, 128 S Ct at 2816-2817. However, the court did not create a legal presumption that such restrictions are constitutional.⁴ Therefore, this court should not now read some presumption into the Supreme Court's holding.

⁴ Respondents' reference to a case footnote does not rise to the level of creating a legal presumption of constitutionality.

Respondents' argument that they should be afforded substantial constitutional deference in their ability to administer their own property is largely moot. First, OAR 580-002-0045(3) did not flow from Respondents' ability to manage their property, but rather was derived from Respondents' authority to regulate as granted in ORS 351.070. Second, in this circumstance the Oregon Revised Statutes have made clear the intent on how state property should be regulated as it pertains to firearms, concealed handgun licenses, and firearms on college and university campuses. Any deference given to the government to administer their property cannot extend so far as to completely circumvent state law. If it did, then state agencies could continually run afoul of state law while hiding behind such deference to justify their actions. Therefore, any deference applied by the federal courts in other cases cannot now be used in the present matter to justify the direct conflict between OAR 580-022-0045(3) and the practical nature and intent of state law.

CONCLUSION

This court should declare OAR 580-022-0045(3) to be invalid because the Board exceeded its statutory authority and the rule violates constitutional provisions.

DATED this 12th day of August, 2010.

ADAMS, DAY & HILL.

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Attorney for Petitioner

CERTIFICATE OF FILING AND SERVICE

I certify that on August 12, 2010, I filed, by hand delivery, the original and 13 copies of the foregoing **PETITIONER'S REPLY BRIEF** with the following:

State Court Administrator
Appellate Court Records Section
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

I certify that on August 12, 2010, I served two true and correct copies of the foregoing **PETITIONER'S REPLY BRIEF** in a sealed envelope sent by regular first class mail on each of the following persons:

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Ernest Prax

From: Christin Anderson <ceanderson5@alaska.edu>
Sent: Wednesday, March 19, 2014 3:19 PM
To: Ernest Prax
Subject: Testimony for HB335

Dear Legislator,

I am a student at the University of Alaska Fairbanks and am very concerned about the campus gun bill.

First of all, students don't know about it. Those that do, in Student Senate or people who have walked into Student Senate and accidentally heard about it like me, don't know where to testify! I called UA spokeswoman Kate Ripley and she talked me through the website until we both realized there was nowhere that told the public where they could testify! After calling a chain of people, I was given your email.

Second, the students I have heard from in Student Senate are very, very opposed to it. A university campus should be a SAFE SPACE. We aren't allowed to have hot plates in dorms, but we might be allowed guns??? It is absurd, and dangerous that the bill has gotten this far.

Some of my friends are RAs, and when they have to deal with a suicide attempt, or confront a student about anything, they do not want that student to have a gun. Similarly, students would not feel comfortable if their RAs had guns. I'm sure you've already heard from all the students, including me, who will transfer out of state, or simply drop out, if this bill passes.

Thank you for reading my testimony,
Christin Anderson



TO PREVENT GUN VIOLENCE

BECAUSE SMART GUN LAWS SAVE LIVES

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VIA FACSIMILE

April 11, 2014

Re: Opposition to SB 176 and HB 335 - Unnecessarily creating a dangerous learning environment.

Dear Representative Keller,

On behalf of the Law Center to Prevent Gun Violence, I offer our opposition to SB 176 and HB 335, bills that remove the authority granted to the University of Alaska Board of Regents and President by the state constitution to regulate firearms on campus. Founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides legal and technical assistance in support of gun violence prevention to federal, state, and local legislators nationwide.

The University already has one of the most permissive firearms policies in the county. Unlike most American institutions of higher education, University of Alaska students are allowed to keep firearms in their residences and transport them to and from their residential buildings. As discussed below, neither the federal or state right to bear arms provisions require the University to allow students to possess guns on campus. However, in enacting its policies, the Board of Regents expressed its intent to balance students' desire to possess firearms with its duty to provide a safe and productive learning environment. Furthermore, the University allows all individuals on campus to possess and store firearms in their vehicles.

Neither the United States Second Amendment nor the Alaska Constitution's Right to Bear Arms (ARBA) requires colleges and universities to allow guns on campus. In *District of Columbia v. Heller*, the U.S. Supreme Court case that held the Second Amendment protects an individual right to keep a handgun for self-defense in the home, the Court explicitly stated that, "nothing in our opinion should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings[.]" Given this explicit guidance from the Supreme Court, lower courts have uniformly upheld laws prohibiting guns on campus. Most significantly, in *Digiacinto v. Rector & Visitors of George Mason University*,¹ the Virginia Supreme Court rejected a Second Amendment challenge to a Virginia public university's policy keeping guns out of school buildings and away from campus events. In fact, since the *Heller* decision, no federal appellate court or state supreme court has struck down a restriction on guns on campus on Second Amendment grounds.

Similarly, like the federal Second Amendment, ARBA, the state counterpart to the Second Amendment, is not unlimited. Alaska courts have held that ARBA was "not intended to eliminate government regulation of people's possession and use of firearms."² ARBA does not require colleges to allow gun on campus. In numerous cases, Alaska courts have recognized that ARBA is not unlimited. For example, in *Gibson v. State*, the Alaska Court of Appeals looked at the history of ARBA and

¹ 704 SE 2d 365 (Va. 2011).

² *Gibson v. State*, 930 P. 2d 1300, 1301 (Ak. App. 1997).

concluded that it did not take away the authority of the legislature to regulate firearm possession.

The court relied in part on the arguments supporting a successful ballot initiative that clarified that ARBA protects an individual right. That argument stated that the proposed amendment would "NOT overturn or invalidate state laws restricting access or possession of arms . . . in school buildings." Thus, ARBA does not require colleges and universities to allow guns on campus.

Furthermore, if enacted, courts may find that these laws violate the Alaska Constitution. The Alaska Constitution endows the Board of Regents with the power to administer property and govern the University.³ While this autonomy is not absolute, the drafters of the Alaska Constitution expressed their intent that the University would remain free from political interference.⁴ SB 176 and HB 335 are politically controversial laws specifically and narrowly aimed at the University's ability to regulate firearms. In fact, the debate over gun regulation is presently one of the most politically polarizing issues in America. As such, these laws may well run afoul of the drafters' intent to provide the Board of Regents autonomy from political interference. A court reasonably may conclude that the legislature impermissibly infringed on the constitutional rights granted to the University.

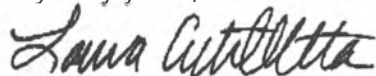
By allowing more guns in sensitive areas such as university campuses, SB 176 and HB 335 may have the unintended consequence of increasing gun violence. Forcing governing bodies to allow guns on campus may lead to more deaths. The American Association of State Colleges and Universities reports that young adults between the ages of 18-25 experience the highest rate of serious mental illness. A Journal of American College Health study demonstrated that between 9% and 11% of college students seriously considered suicide in the previous school year and the U.S. Centers for Disease Control and Prevention states that about 1,100 college students commit suicide each year. When a gun enters this mix, data from the U.S. Department of Education show that a suicide attempt becomes considerably more lethal, as 85% of gun suicide attempts are fatal.

Finally, more guns will not increase student safety. There is no credible evidence to suggest that the presence of guns will reduce violence on college campuses.⁵ This fact belies any need for students, faculty, and visitors to carry guns on campus for self-defense or any other reason.

Forcing guns onto our college campuses would pose additional concerns, such as a greater likelihood of gun thefts, increased liability and public relations costs for colleges that lack institutional authority to restrict weapons, and inhibiting dialogue by making students and faculty feel less safe to freely express ideas and exchange information.

SB 176 and HB 335 are unnecessary, possibly unconstitutional and may increase gun violence. We urge you to vote "no" on these bills.

Very truly yours,



Laura Cutilletta, Senior Staff Attorney

³ AK Const. Art. 7, §§ 2, 3.

⁴ 2007 Alaska Op. Att'y. Gen. (Feb. 2), pp 2-3.

⁵ Evidence suggests that permissive concealed gun carrying generally will increase crime. See, e.g., Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193, 1285, 1296 (Apr. 2003); and Ian Ayres & John J. Donohue III, *The Latest Misfires in Support of the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1371, 1397 (Apr. 2003).