

**ALASKA LEGISLATURE**

**1792**

**HOUSE and SENATE FINANCE COMMITTEE FILES, © 1997-1998**

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: SB 136

1 Page 3, following line 28:

2 Insert a new bill section to read:

3 **"\* Sec. 8. AS 37.07.070 is amended to read:**

4 **Sec. 37.07.070. Legislative review.** The legislature shall consider the  
5 governor's proposed comprehensive operating and capital improvements programs and  
6 financial plans, evaluate alternatives to the plans, make program selections among the  
7 various alternatives and determine, subject to available revenues, the level of funding  
8 required to support authorized state services. The operating and capital budgets of  
9 each agency shall be separately reviewed. During each regular session of the  
10 legislature, legislative review of the governor's supplemental appropriation bills and  
11 the governor's budget amendments shall be governed by the following time limits:

12 (1) Requests by the governor for supplemental appropriations for state  
13 agency operating and capital budgets for the current fiscal year may be introduced by  
14 the rules committee only through the 30th legislative day.

15 (2) Requests by the governor for budget amendments to state agency  
16 budgets for the budget fiscal year may be received and reviewed by the finance  
17 committees only through the 50th [60TH] legislative day."

18 Renumber the following bill section accordingly.

*Amnd #2 Withdrawn  
before meeting @  
request of Sponsor.*

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: SB 136

1 Page 1, line 1, following "budget":

2 Insert ", to agency performance reports,"

3 Page 3, following line 28:

4 Insert a new bill section to read:

5 **\*\* Sec. 8. AS 37.07.090(a) is amended to read:**

6 (a) **No later than September 1, each** [EACH] state agency shall submit a  
7 performance report to the office [NO LATER THAN SEPTEMBER 1] for the  
8 preceding fiscal year **and notify the legislature that the report is available.** These  
9 reports must be in the form prescribed by the office after consultation with the  
10 legislative finance division [,] and must include

11 (1) an identification of the objectives intended for the program and the  
12 problem or need **that** [WHICH] the activities and operations of the board,  
13 commission, or program is intended to address;

14 (2) an assessment of the degree to which the original objectives of the  
15 program have been achieved expressed in terms of performance, effects, or  
16 accomplishments of the program and of the program or need that it was intended to  
17 address;

18 (3) a statement of the performance and accomplishments of the  
19 program in each of the last four completed fiscal years and of the costs incurred in  
20 the operation of the program;

21 (4) a statement of the number and types of persons affected by  
22 operation of the program;

23 (5) a summary statement, for each of the last three completed fiscal  
24 years, of the number of personnel employed in carrying out the program and a

1           summa y of the cost of personnel employed under contract in carrying out the  
2           program;

3                   (6) an assessment of the effect of the program on the economy of the  
4           state;

5                   (7) an assessment of the degree to which the overall policies of the  
6           program, as expressed in regulations adopted by the agency, board, or commission and  
7           its decisions, meet the objectives of the legislature in establishing the program; and

8                   (8) an analysis of the services and performance estimated to be  
9           achieved if the life of the agency, board, or commission were to be continued."

10    Renumber the following bill section accordingly.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: SB 136

- 1 Page 1, line 1, following "budget":
- 2       Insert ", to agency performance reports,"
  
- 3 Page 3, following line 28:
- 4       Insert a new bill section to read:
- 5       "\* Sec. 8. AS 37.07.090(b) is amended to read:
- 6               (b) The office shall summarize the performance reports and forward copies
- 7               to each member of the legislature by January 10 each year."
  
- 8       Renumber the following bill section accordingly.

SENATE FINANCE  
COMMITTEE

Amendment Number: 5

Bill Number: SB 136

Sponsor: Parnell Date: 3-25-97

Logged In By: H. Smith

0-LS0730\E.6

Cook

3/24/97

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: SB 136

1 Page 3, following line 10:

2 Insert a new bill section to read:

3 "\* Sec. 6. AS 37.07.040 is amended by adding a new paragraph to read:

4 (9) for each department in the executive branch, report to the  
5 legislature by the 45th day of each regular session the amount of money appropriated  
6 to the department that is expected to lapse into the general fund at the end of the  
7 current fiscal year."

8 Renumber the following bill sections accordingly.

**SB**

**139**

SFIN

FILE

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 3/13/97

FURTHER: Finance

Date of 5-Day Notice: 3/13  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4-7-97

Community and Regional Affairs Committee considered: SENATE BILL NO. 139

"An Act relating to state aid to volunteer fire departments/ and providing for an effective date."

*O. Folis*

and recommends:

- be replaced with \_\_\_\_\_ CS SB 139 (CRA)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO-PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Davis only</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<b>CHAIR:</b> <i>[Signature]</i> <i>mach.</i>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
<b>CRA</b>	<b>3/13</b>	✓	
<b>P. Safety</b>	<b>4/1</b>		✓

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

to CS 2B

Revision Date: \_\_\_\_\_  
Title: State aid to volunteer Fire Departments

Dept. Affected: Health and Social Services

BRU: State Health Services

Component: Community Health/EMS Services

Sponsor: Torgerson

COMPONENT SERIAL NO. 2078

Requestor: Senate Finance

See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ( )						
-------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

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

Prepared by: Peter M. Nakamura, MD, MPH  
Division: Public Health

Phone: (907) 465-3090  
Date: 05/06/97

Approved by Commissioner: Karen Perdue, Commissioner  
Agency: Department of Health & Social Services

Date: 5/6/97

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

REPORTED OUT OF  
SFC MAY 7 1997

No. 12  
Bill Version: CSSB 139 (CRA)  
(S) Publish Date: 4-9-97

**FISCAL NOTE**

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
Title: An Act relating to state aid to volunteer fire departments; and providing for ... BRU: none  
Sponsor: SENATOR TORGERSON Component: none  
Requestor: Senate CRA Committee COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>REVENUE FUND SOURCE:</b>						
-----------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY97) Impact \$ none

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

This legislation expands the State Revenue Sharing Miscellaneous Entitlement Sharing for volunteer fire departments to include those located inside boroughs. The department believes the additional administrative requirements resulting from this change are not significant and can be absorbed by existing program staff. This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
Division: Division of Administrative Services Date: 3/18/97  
Approved by Commissioner: Mike Amis *Mike Amis* Date: 3/18/97  
Agency: Community & Regional Affairs

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# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

REPORTED OUT  
MAY 7 1997

BILL NO. 1

Bill Version: CSB 139 (CRA)  
(S) Publish Date: 4-9-97

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: State aid to volunteer fire departments BRU: Fire Prevention  
Sponsor: Senator Torgerson Component: Fire Prevention Operations  
Requestor: S.CRA COMPONENT SERIAL NO. 0494

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
<b>OPERATING</b>						
PERSONAL SERVICES	40.0	41.0	42.0	43.0	44.0	45.0
TRAVEL						
CONTRACTUAL						
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	6.0	1.0	5.0			
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>48.0</b>	<b>44.0</b>	<b>44.5</b>	<b>45.0</b>	<b>46.0</b>	<b>47.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>48.0</b>	<b>44.0</b>	<b>44.5</b>	<b>45.0</b>	<b>46.0</b>	<b>47.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

Estimate of current year (FY 97) impact: \$ -0- This bill could not be implemented this FY.

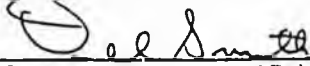
**POSITIONS:**

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

Passage of this bill would require someone to provide and review applications to make sure they conform to the standards and regulations adopted by the state fire marshal. The applications would have to be designed, printed, mailed, reviewed, processed and entered into the data base on an annual basis.

This bill would require the addition of at least one full time administrative clerk II position in order to provide this service. It would also require office space, office furniture, forms, computer equipment, and office supplies.

Prepared By: Jerry V. Gentile Phone: 465-4332  
Division: Fire Prevention Date: 4/1/97  
Approved by Commissioner:  Date: \_\_\_\_\_  
Agency: Ronald L. Otte, Dept. of Public Safety

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1        29.60.120, and 29.60.140 - 29.60.180 [29.60.100 - 29.60.180].

2        \* Sec. 11. This Act takes effect July 1, 1997.

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

REPORTED OUT OF  
CFC MAY 7 1997

0-LS0758B  
moved Sen. Adams  
w/o objection, r/c

**CS FOR SENATE BILL NO. 139(CRA)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

Offered: 4/9/97

Referred: Finance

Sponsor(s): SENATOR TORGERSON

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to state aid for volunteer services; and providing for an  
2 effective date."

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

4 \* **Section 1.** AS 29.20.640(b) is amended to read:

5 (b) Compliance with the provisions of this section is a prerequisite to receipt  
6 of municipal tax resource equalization assistance under AS 29.60.010 - 29.60.080 and  
7 state aid for miscellaneous municipal services under AS 29.60.100 - 29.60.120 and  
8 29.60.140 - 29.60.180 [AS 29.60.100 - 29.60.180]. If a municipality does not comply  
9 with this section, the department shall withhold the allocations until the required  
10 reports are filed.

11 \* **Sec. 2.** AS 29.45.020 is amended to read:

12 **Sec. 29.45.020. Taxpayer notice.** (a) If a municipality levies and collects  
13 property taxes, the governing body shall provide the following notice:

14 "NOTICE TO TAXPAYER

1 For the current fiscal year the (city)(borough) has been allocated the following amount  
 2 of state aid for school and municipal purposes under the applicable financial assistance  
 3 Acts:

4	PUBLIC SCHOOL FOUNDATION PROGRAM	
5	ASSISTANCE (AS 14.17)	\$
6	STATE AID FOR RETIREMENT OF SCHOOL	
7	CONSTRUCTION DEBT (AS 14.11.100)	\$
8	MUNICIPAL TAX RESOURCE EQUALIZATION	
9	ASSISTANCE (AS 29.60.010 - 29.60.080)	\$
10	STATE AID FOR MISCELLANEOUS MUNICIPAL	
11	SERVICES (AS 29.60.100 - 29.60.120 and AS 29.60.140 -	
12	<u>29.60.180</u> [AS 29.60.100 - 29.60.180])	\$
13	TOTAL AID	\$

14 The millage equivalent of this state aid, based on the dollar value of a mill in the  
 15 municipality during the current assessment year and for the preceding assessment year,  
 16 is:

	MILLAGE EQUIVALENT	
	PREVIOUS YEAR	THIS YEAR
19 PUBLIC SCHOOL FOUNDATION		
20 PROGRAM ASSISTANCE	....MILLS	....MILLS
21 STATE AID FOR RETIREMENT OF		
22 SCHOOL CONSTRUCTION DEBT	....MILLS	....MILLS
23 MUNICIPAL TAX RESOURCE		
24 EQUALIZATION ASSISTANCE	....MILLS	....MILLS
25 STATE AID FOR MISCELLANEOUS		
26 MUNICIPAL SERVICES	....MILLS	....MILLS
27 TOTAL MILLAGE EQUIVALENT	....MILLS	....MILLS"

28 Notice shall be provided

29 (1) by furnishing a copy of the notice with tax statements mailed for  
 30 the fiscal year for which aid is received; or

31 (2) by publishing in a newspaper of general circulation in the

1 municipality a copy of the notice once each week for a period of three successive  
2 weeks, with publication to occur not later than 45 days after the final adoption of the  
3 municipality's budget.

4 (b) Compliance with the provisions of this section is a prerequisite to receipt  
5 of municipal tax resource equalization assistance under AS 29.60.010 - 29.60.080 and  
6 state aid for miscellaneous municipal services under AS 29.60.100 - 29.60.120 and  
7 29.60.140 - 29.60.180 [AS 29.60.100 - 29.60.180]. The department shall withhold  
8 annual allocations under those sections until municipal officials demonstrate that the  
9 requirements of this section have been met.

10 \* Sec. 3. AS 29.45.660(b) is amended to read:

11 (b) Compliance with the provisions of this section is a prerequisite to receipt  
12 of municipal tax resource equalization assistance under AS 29.60.010 - 29.60.080 and  
13 state aid for miscellaneous municipal services under AS 29.60.100 - 29.60.120 and  
14 29.60.140 - 29.60.180 [AS 29.60.100 - 29.60.180]. The department shall withhold  
15 annual allocations under those sections until municipal officials demonstrate that the  
16 requirements of this section have been met.

17 \* Sec. 4. AS 29.60.130 is amended to read:

18 Sec. 29.60.130. State aid for [TO] volunteer services [FIRE  
19 DEPARTMENTS NOT IN ORGANIZED MUNICIPALITY]. (a) The department  
20 shall pay to a volunteer fire department registered with the state fire marshal and  
21 serving an area with a population of less than 2,500 [NOT IN AN ORGANIZED  
22 MUNICIPALITY] a sum for protection purposes equal to \$10 per capita for the  
23 population served by the fire department, as determined by the state fire marshal.

24 (b) A grant shall be made [UNDER (a) OF THIS SECTION] to facilitate the  
25 organization of a volunteer fire department in an area with a population of less than  
26 2,500 [NOT IN AN ORGANIZED MUNICIPALITY,] upon application of the  
27 proposed fire protection group to the state fire marshal and upon approval of  
28 applications according to standards of organization and service prescribed by  
29 regulations adopted by the state fire marshal.

30 \* Sec. 5. AS 29.60.130 is amended by new subsections to read:

31 (c) The department shall pay to an organization that provides volunteer

1 emergency medical services a sum equal to \$10 per capita for the population served  
2 by the organization to be used for the services if the organization

3 (1) is certified by the state to provide emergency medical services;

4 (2) provides ambulance services; and

5 (3) serves an area with a population of less than 2,500.

6 (d) Payments to a recipient under this section shall reflect area cost-of-living  
7 differentials calculated in accordance with AS 29.60.160.

8 (e) The volunteer services account is established. Money to carry out the  
9 provisions of this section shall be allocated by the department to the account in  
10 accordance with AS 29.60.280. If amounts in the account are insufficient to pay each  
11 recipient's share authorized under this section, the amounts that are available shall be  
12 distributed pro rata among recipients.

13 \* Sec. 6. AS 29.60.170 is amended to read:

14 **Sec. 29.60.170. Miscellaneous services account.** The miscellaneous services  
15 account is established. Money to carry out the provisions of AS 29.60.100 - 29.60.120  
16 and 29.60.140 - 29.60.180 [AS 29.60.100 - 29.60.180] shall be allocated by the  
17 department to the account in accordance with AS 29.60.280. If amounts in the account  
18 are insufficient to pay each municipality's or other recipient's share authorized under  
19 AS 29.60.100 - 29.60.120 and 29.60.140 - 29.60.180 [AS 29.60.100 - 29.60.180], the  
20 amounts that are available shall be distributed pro rata among eligible municipalities  
21 and other recipients.

22 \* Sec. 7. AS 29.60.280(a) is amended to read:

23 (a) Each year, the department shall allocate money appropriated to the  
24 accounts established in AS 29.60.060, 29.60.130(e), 29.60.170, and former  
25 AS 29.90.020 in the amounts determined by the legislature.

26 \* Sec. 8. AS 29.60.280(b) is amended to read:

27 (b) Money in the miscellaneous services account established in AS 29.60.170  
28 that exceeds the amount required to fully fund distributions authorized by  
29 AS 29.60.100 - 29.60.120 and 29.60.140 - 29.60.180 [AS 29.60.100 - 29.60.180] shall  
30 be reallocated to the tax equalization account established in AS 29.60.060 and  
31 distributed according to the provisions of AS 29.60.010 - 29.60.080. Money in the

1 volunteer services account established in AS 29.60.130(e) that exceeds the amount  
 2 required to fully fund distributions authorized by AS 29.60.130 shall be  
 3 reallocated to the tax equalization account established in AS 29.60.060 and  
 4 distributed according to the provisions of AS 29.60.010 - 29.60.080.

5 \* Sec. 9. AS 29.60.290(a) is amended to read:

6 (a) A municipality qualifying for an entitlement under AS 29.60.010 -  
 7 29.60.080, 29.60.100 - 29.60.120, or 29.60.140 - 29.60.180 [29.60.100 - 29.60.180]  
 8 shall receive a minimum payment plus an area cost-of-living differential for each fiscal  
 9 year if

10 (1) the municipality has conducted a regular election during the state  
 11 fiscal year preceding the year in which the department's determination of the  
 12 municipality's millage rate equivalent is made under AS 29.60.030 and has reported  
 13 the results of the election to the commissioner;

14 (2) regular meetings of the governing body are held in the municipality  
 15 during the state fiscal year preceding the year in which the department's determination  
 16 of the municipality's millage rate equivalent is made under AS 29.60.030 and a record  
 17 of the proceedings is maintained;

18 (3) a municipal budget has been adopted for the fiscal year during  
 19 which payment of an entitlement is authorized by AS 29.60.010 - 29.60.080,  
 20 29.60.100 - 29.60.120, or 29.60.140 - 29.60.180. [29.60.100 - 29.60.180] and an audit  
 21 or financial statement for the fiscal year preceding the year in which the department's  
 22 determination of the municipality's millage rate equivalent is made under  
 23 AS 29.60.030 has been prepared and furnished to the department in accordance with  
 24 AS 29.20.640(a); and

25 (4) local ordinances adopted by the municipality have been codified in  
 26 accordance with AS 29.25.050.

27 \* Sec. 10. AS 29.60.290(c) is amended to read:

28 (c) The department shall pay to each municipality eligible to receive a  
 29 minimum payment under this section an amount equal to the difference between the  
 30 minimum payment determined under (a) and (b) of this section and the sum of the  
 31 amounts payable for the same fiscal year under AS 29.60.010 - 29.60.080, 29.60.100 -

1           29.60.120. and 29.60.140 - 29.60.180 [29.60.100 - 29.60.180].

2           \* Sec. 11. This Act takes effect July 1, 1997.

**SENATE FINANCE COMMITTEE REPORT**

REPORTED OUT OF  
MAY 7 1997

DATE: 4/9/97

FURTHER: SFC

DATE TURNED  
IN TO OFFICE: 5-7-97

Finance Committee considered

SENATE BILL NO. 139

"An Act relating to state aid to volunteer fire departments; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS SB 139 (CRA)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:** same title
- new title
- House Bill:** same title
- technical change
- new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Roll &amp; Co. 100</i>	→	<i>Alan R. Farrell</i>	✓		
<i>John Loggins</i>	✓	<i>Bill Adams</i>	✓		
		<i>Walter Buley</i>	✓		
Co-Chair: <i>Peace</i>	✓	Co-Chair:			
Co-Chair: <i>Don King</i>	✓	Co-Chair:			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

(late)

Department	Date	Zero	Fiscal
DHSS	5/6	✓	

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

Department	Date	Zero	Fiscal
1    DPS	4/1		48.0
2    DCRA	3/18	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**SB**

**141**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

~~Date~~ Referred to Committee: May 5, 1997

FURTHER REFERRALS:

Date of Committee Action: 5/7/97 p.

The FINANCE Committee considered:

CSSB 141(RLS) am

CS FOR SENATE BILL NO. 141(RLS) am

CONCEALED HANDGUN PERMITS

"An Act relating to permits to carry concealed handguns; and relating to the possession of firearms."

recommends it be replaced with the following committee substitute HCS CS SB 141 (FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) DPS 3/26/97

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DPS 4/3/97  
DPS 3/26/97

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault			X	
<i>Mark Hankley</i>	Hankley			X	
<i>Gordon Wild</i>	Wild	X			
<i>Terry Martin</i>	Martin	X			
<i>Vig Kohring</i>	Kohring	X			
<i>J. Davis</i>	J. Davis				X
<i>Gussendat</i>	Gussendat			X	
<i>Q. Davis</i>	Q. Davis			X	
<i>Foster</i>	Foster	X			

(10) CHAIR'S SIGNATURE

*Gene Theriault*  
 Theriault

*Mark Hankley*  
 Hankley

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO:** N 5  
 Bill Verson: CSSB 141 (STA)  
 (S) Publish Date: 4-3-97

Revision Date: 03/28/97 Dept. Affected: Public Safety  
 Title: Concealed Handguns BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Sen. Green  
 Requestor: S. STA COMPONENT SERIAL NO. 0799

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	5.0					
<b>TOTAL OPERATING</b>	<b>5.0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>	<b>5.0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CHANGE IN REVENUES ( )</b>	<b>(37.8)</b>	<b>(37.8)</b>	<b>(37.8)</b>	<b>(37.8)</b>	<b>(37.8)</b>	<b>(37.8)</b>
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

Estimate of current year (FY 97) impact \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

This bill will have fiscal impact on AST depending on further clarification of some parts and depending on modifications to others. An indeterminate fiscal note is being submitted at this time. Some areas of concern are noted on the attachment.

Prepared By: F/Sgt. Robert Gorder Phone: 269-5650  
 Division: Alaska State Troopers Date: 03/28/97  
 Approved by Commissioner: Ronald C. Otte Date: 3-31-97  
 Agency: Department of Public Safety

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Attachment to CSSB 141 fiscal note.

The areas of greatest fiscal concern are as follows:

1. Changes proposed by this bill in the areas of qualifications, suspension and revocation, domestic violence, nationwide reciprocity, etc. will require DPS to undertake a regulation project to modify existing regulations and add new regulations to administer the new provisions in this bill. The average regulation project costs approximately \$5000.00.
3. Provisions outlining national reciprocity will require modification to the statewide information system (APSIN) or will require the creation of a LAN/WAN based information system that can be made accessible to law enforcement agencies statewide, 24 hours a day.
4. Reduction of the permit fee from a maximum of \$125.00 (actual fee has been set at \$122.00) to a new maximum fee of \$99.00 will have an effect on the costs to the division. Currently, the costs to operate the ACHP are just being offset by the revenues collected. Any reduction in the fees will require the division to absorb the shortfall. How much that will be depends on the amount of permits processed. An estimated \$23 per permit would have to be absorbed.

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO.** 3  
**Bill Vers Ori:** SB 141  
**(S) Publish Date:** 3-26-97

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Concealed handgun permits BRU: Statewide Support  
 \_\_\_\_\_ Component: Information Systems  
 Sponsor: Senator Green  
 Requester: Senate State Affairs **COMPONENT SERIAL NO.** 0528

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts	0	0	0	0	0	0
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>						

Estimate of current year (FY 97) impact: \$ 13.2

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

See attachment.

Prepared By: Ken Bischoff, Director Phone: (907) 465-4336  
 Division: Division of Administrative Services Date: \_\_\_\_\_  
 Approved by Commissioner: *Ronald L. Otte* Date: 3/19/97  
 Agency: Ronald L. Otte, Dept. of Public Safety

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STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 141

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety

ANALYSIS CONTINUED:

Assumptions:

1. Since no effective date is given, it is assumed the law will become effective during this fiscal year. If this assumption is incorrect, the current year impact will be moved to the appropriate year to allow Information Systems to complete computer programming work in time to comply with the new law.
2. Section 5 will require Information Systems to contract for computer programming to modify the current application for a new type of permit (emergency), with a new fee (none), different expiration date (90 days) new eligibility criteria (no similar permit issued within past 5 years), and rejecting renewal. Section 10 will require computer programming to change the current fees for regular permits and renewals. Contractual fees for computer programming and technical consultation for changes needed to the permit photograph machine, modifications to the download program, and training on the application changes are estimated as follows:

$$175 \text{ hours} \times \$75/\text{hour} = \$ 13, 125$$

3. It is assumed that the lower fees for regular permits and renewals will not change the \$59 fingerprint processing fees forwarded to the Records and Identification Bureau by AST, and that the impact of the lower fee will be reflected in AST's fiscal note.

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

BILL NO. 2  
 Bill Version: SB 141  
 (S) Publish Date: 3-26-97

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Concealed handgun permits BRU: CDVSA  
 Component: CDVSA  
 Sponsor: Sen. Green  
 Requestor: S. State Affairs COMPONENT SERIAL NO. 0521

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

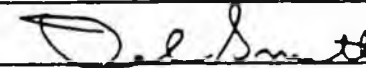
Estimate of current year (FY 97) impact: \$ 0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Jayne E. Andreen, Executive Director Phone: 907-465-4356  
 Division: Council on Domestic Violence and Sexual Assault Date: 3/19/97  
 Approved by Commissioner:  Date: 3/19/97  
 Agency: Ronald L. Otte, Dept. of Public Safety

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#2

~~withdrew~~  
failed

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TC: CSSB 141(RLS) am

1 Page 7, lines 17 - 23:

2 Delete all material and insert:

3 **"\* Sec. 16.** AS 18.65.755(a) is amended to read:

4 (a) A permittee may not carry a concealed handgun into

5 (1) a law enforcement or correctional facility;

6 (2) or on [SCHOOL GROUNDS OR] a school bus; [IN THIS

7 PAR. CAPH, "SCHOOL GROUNDS" HAS THE MEANING GIVEN IN

8 AS 11.71.900];

9 (3) ~~[A COURTHOUSE OR A COURTROOM OF THIS STATE,  
10 UNLESS THE PERMITTEE~~

11 ~~(A) IS A JUDGE; OR~~

12 ~~(B) HAS BEEN AUTHORIZED TO POSSESS A  
13 CONCEALED HANDGUN BY A JUDGE PRESIDING AT THAT  
14 COURTHOUSE OR COURTROOM;~~

15 (4) A BUILDING HOUSING ONLY STATE OR FEDERAL  
16 OFFICES OR THE OFFICES OF A POLITICAL SUBDIVISION OF THE STATE,  
17 EXCEPT AS AUTHORIZED UNDER (3) OF THIS SUBSECTION;

18 (5) an office of the state, federal government, or of a political  
19 subdivision of the state [THAT IS NOT LOCATED IN A BUILDING DESCRIBED  
20 IN (4) OF THIS SUBSECTION];

21 (6) A PASSENGER LOADING OR UNLOADING AREA OF AN  
22 AIRLINE TERMINAL;

23 (7) A VESSEL OF THE ALASKA MARINE HIGHWAY SYSTEM];

24 (4) [(8)] a facility providing services to victims of domestic violence  
25 or sexual assault;

1                   **(5) or within [(9)] a residence, other than the permittee's residence,**  
2                   **unless the permittee has first obtained permission of an adult residing there to**  
3                   **bring a concealed handgun into or within the residence** [WHERE NOTICE THAT  
4                   CARRYING A CONCEALED HANDGUN IS PROHIBITED HAS BEEN GIVEN  
5                   BY THE POSTING OF A CONSPICUOUS NOTICE OR BY ORAL STATEMENT  
6                   BY THE RESIDENT TO THE PERMITTEE];

7                   **(6) [(10)] a meeting of a business, charitable, or other organization or**  
8                   **entity where notice that carrying a concealed handgun is prohibited has been given**  
9                   **by the posting of conspicuous notice; in this paragraph, the posting of a**  
10                   **conspicuous notice is satisfied if the notice is printed in legible English, is at least**  
11                   **144 square inches in size, contains the name and address of the person under**  
12                   **whose authority the notice is posted, and is posted at each entrance to the place**  
13                   **where a meeting is being held**

14                   [(11) A FINANCIAL INSTITUTION; IN THIS PARAGRAPH,  
15                   "FINANCIAL INSTITUTION" MEANS A BANK, SAVINGS BANK, SAVINGS  
16                   ASSOCIATION, CREDIT UNION, OR OTHER INSTITUTION REGULATED BY  
17                   THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
18                   UNDER AS 06];

19                   **(7) or within a [(12) ANOTHER] place where the possession of a**  
20                   **handgun [DEADLY WEAPON OR FIREARM] is prohibited by state or federal law;**  
21                   or

22                   **(8) [(13)] a municipality or established village that has prohibited the**  
23                   **possession of concealed handguns by a permit under AS 18.65.780 - 18.65.785."**

failed

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141 (RLS) am

#7

Page 2, following line 21:

Insert a new subsection to read:

“\*Sec. 3. AS 11.61.220(a) is amended to read:

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

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person;

(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 a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children; or

(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) a facility providing services to victims of domestic violence or sexual assault; or

(5) possesses or transports a switchblade or a gravity knife.”

Renumber the following bill sections accordingly.

5/6/97  
passed 6/1 #1

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: CSSB 141(RLS) am

1 Page 2, following line 21:

2 Insert a new bill section to read:

3 **\*\* Sec. 3.** AS 11.61.220(a) is amended to read:

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

6 (1) knowingly possesses a deadly weapon, other than an ordinary  
7 pocket knife or a defensive weapon, that is concealed on the person;

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

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

12 (4) knowingly possesses a firearm

13 (A) within the grounds of or on a parking lot immediately  
14 adjacent to a center, other than a private residence, licensed under AS 47.33  
15 or AS 47.35 or recognized by the federal government for the care of children;

16 or

17 (B) within a

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

19 or

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

22 (5) possesses or transports a switchblade or a gravity knife."

23 Renumber the following bill sections accordingly.

1 Page 4, line 2:

2 Delete "a new subsection"

3 Insert "new subsections"

4 Page 4, following line 8:

5 Insert a new subsection to read:

6 "(i) In a prosecution under (a)(4)(B) of this section, it is a defense that the  
7 defendant, at the time of possession, was authorized to possess the firearm under a  
8 rule of court."

failed 2-6 #3

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141(RLS) am

- 1 Page 6, line 13:
- 2 Delete "and"
- 3 Page 6, following line 13:
- 4 Insert new paragraphs to read:
- 5 "(5) has not been convicted, within the six years immediately
- 6 preceding the application, and is not currently charged under a complaint, information,
- 7 indictment, or presentment, of a crime involving domestic violence as defined in
- 8 AS 18.66.990;
- 9 (6) is not now the respondent in a protective order under AS 18.66.100
- 10 - 18.66.180 unless the protective order has been dissolved or has expired; and"
- 11 Renumber the following paragraph accordingly.

failed - 2-5  
AMENDMENT #4

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141 (RLS) am

Page 1, line 4, add a new bill section:

**\*Section 1.** AS 11.46.350(a) is amended to read:

(a) As used in AS 11.46.300 - 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a notice as provided in (c) of this section or in violation of a provision in an order issued or filed under AS 18.66.100 - 18.66.180 or issued under former AS 25.35.010(b) or 24.35.020.

Failed 2-5  
AMENDMENT

#5

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141 (RLS) am

Page 6, line 13:

Delete "and"

Page 6, line 15, following AS 18.65.715:

Delete "."

Insert "; and

(6) is not now suffering, and has not within the six years immediately preceding the application suffered, from a mental illness as defined in AS 47.30.915."

Failed 2-5

#6

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141 (RLS) am

Page 6, line 13:

Delete "and"

Page 6, line 15, following AS 18.65.715:

Delete "."

Insert "; and

(6) is not now and has not within the three years immediately preceding the application been ordered by a court to complete an alcohol treatment program; and

(7) is not now and has not within the three years immediately preceding the application entered a substance abuse treatment program."

Failed 3-4

#8

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141 (RLS) am

Add a new bill section to read:

**"Sec. 18.65.746. No liability for victims of domestic violence and employees, or volunteers of domestic violence shelters or facilities. Victims of domestic violence and employees, officers and volunteers of domestic violence shelters or facilities are not liable for any injury, intentional or accidental, caused to another in the course of defending themselves or others in the shelter or facility, or in defending the shelter or facility against attack."**

#9

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141 (RLS) am

Page 7, line 21:

Delete "and"

Insert "(2) on a school bus on which children are being transported to or from school or a school sanctioned event; and"



No Obj 5/7/97P.  
Semi Conceptual  
AMENDMENT  
NEW  
#9

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 141 (RLS) am

P. 1 line 9

Section 2

~~Page 7, line 21:~~

In AS 11.61.210 (c)(7) after school sponsored

Delete "and"

Insert "(2) on a school bus on which children are being transported to or from school or a school sanctioned event; and"

ad I- AS 11.61.210 (c)(8) ditto

11.61.210 (c)(7)

**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;

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

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

(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 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 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, § 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. (§ 7 ch 166 SLA 1978; am §§ 21, 22 ch 102 SLA 1980; am §§ 2, 4 ch 63 SLA 1990; am § 7 ch 59 SLA 1991; am §§ 15, 16 ch 79 SLA 1992; am §§ 1, 2 ch 33 SLA 1995)

**Revisor's notes.** — Subsection (c) was enacted as (d). Relettered in 1995. Subsection (d) was formerly (b); relettered as (c) in 1980 and relettered again in 1995.

**Effect of amendments.** — The 1990 amendment added "in circumstances other than described in AS 11.61.200 (a)(7)" at the end of paragraph (a)(1) and repealed subsection (b).

The 1991 amendment, effective September 15, 1991, in subsection (a), rewrote paragraph (1) and added paragraphs (4) and (5).

The 1992 amendment, effective September 14,

1992, substituted "fourth degree" for "second degree" near the beginning of subsection (a) and in subsection (d); and added paragraph (a)(6) and made related stylistic changes.

The 1995 amendment, effective August 17, 1995, added paragraph (a)(7), made a related stylistic change, and added subsection (c).

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

# ALASKA STATE LEGISLATURE

*Interim:*

600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 376-3370  
(907) 376-3157 Fax



*Session:*

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-6600  
Fax (907) 465-3805

## SENATOR LYDA GREEN

SENATE DISTRICT N

### SB 141

#### **Revisions to Alaska's Concealed Handgun Permit Law:**

**Smaller, smarter government: less bureaucracy and more clarity for citizens**

The intent of SB141 is simple:

There is no reason the permitted few should be more restricted than the unregulated many. Treat people and their handguns equally. All Alaskans, who are not otherwise prohibited by federal or state law from owning or possessing handguns, can carry handguns openly in certain places and can carry concealed without a permit in certain places. An Alaskan should be able to carry a concealed handgun in those same places, we should do no more than require fingerprinting, training, and background checks.

With the exception of the recognition of out-of-state permits and the lowering of the permit fee, the **Alaska Peace Officers Association supports SB141.**

The **Police Chiefs of the North Slope Borough, Valdez and Wasilla** have either spoken out or testified in favor of SB141.

**SB141 is endorsed by the Alaska Outdoor Council and the National Rifle Association.**

The Department of Public Safety supports most of the bill and opposes certain sections. The Department contends that without an increase in volume, reducing fees could result in no collecting enough funds to cover costs of the program. The Department also remains opposed to recognizing out-of-state permits and is cautious about changing the law at all.

### **OBSERVATIONS**

There have been over 6,300 permits issued in Alaska for carrying concealed handguns since that right was recognized in state law in 1994. The Department of Public Safety has done a remarkable job of ensuring fair and speedy processing of applications.

However, Alaskans have voiced some complaints on overly restrictive and confusing prohibitions and regulations leading to a burdensome waste of time. Many of these stipulations were included in the original legislation due to courteous consideration of

the dire predictions of mayhem in the streets from some members of the legal community and law enforcement. None of those dire predictions has proven accurate during years of experience and it is appropriate to restore equal rights for law-abiding citizens.

For the most part, the law is working. Crime is down. According to the information we have from the Department of Public Safety, of 6,300 permittees, not one person has used their concealed handgun to commit a crime.

Similar legislation (SB177) passed last session by large majorities, but was vetoed by the Governor. Even though legislation last year prohibited anyone from drinking and carrying a concealed handgun, some felt that whether one was drinking or not, no concealed handguns should be allowed in bars. In the spirit of compromise, we have drafted SB141 to allow concealed handguns in restaurants regulated under AS 04.16.049 and not in bars.

This bill does not change other state law restricting carrying weapons in bars or schools. All the other existing laws restricting handguns in bars and schools remain in force.

If SB141 is passed, the simple effect would be that anywhere you can carry a handgun openly (which you can do without training, without background checks, without fingerprinting, and without a permit) you will be able to carry a permitted concealed handgun.

If 300,000 adult Alaskans can legally carry a handgun openly, there is no reason to have greater restrictions for the 6,300 Alaskans who have been fingerprinted, checked, trained and permitted.

The existing law is too restrictive, too confusing and too expensive. For example, under current law you are prohibited from walking into a financial institution with a permitted concealed handgun, but you are allowed to take the handgun out and carry it openly into the bank. Existing law too often turns common sense on its head.

### SECTIONAL ANALYSIS

**Section 1 and 2** amend Alaska criminal statutes to make clear that no felon, even a non-violent felon, would ever be able to apply for a concealed carry permit.

**Sections 3, 5 and 15** of the bill make several things much cleaner and easier to enforce. If a person is a concealed handgun permit holder from another state and comes to Alaska to visit, we will recognize that permit. However, that person is responsible for following the laws regulating Alaskan permit holders. Section 15 recognizes a visitor's out-of-state permit for 120 days in Alaska, but no longer. This also allows a new Alaskan resident an opportunity to make the transition from one state to Alaska and comply with the 90 day waiting period mandated by our permit law and the 30 day application period with the Department of Public Safety.

These amendments simply recognize equality of Americans as requested by SJR14, which supports legislation in the U.S. Congress seeking nationwide recognition of concealed carry permits issued by any government agency or subdivision.

**Sections 3 and 5** improve definitions and continues to permit a municipality or village to prohibit possession of concealed handguns.

**Section 5** leaves existing law in place making bars off limits to concealed handguns, but does allow access to restaurants identified under AS 04.16.049. If the Alcohol Beverage Control Board finds that a business, or a specific area of a business, is not a bar you will be allowed to carry concealed, but you will not be allowed to drink any alcohol.

**Sections 7 and 11** ensure that the applicant for a permit receives a copy of the state law and regulations and certifies the applicant read them. The bill also requires the Department of Public Safety to compile a concise summary of where, when and by whom a handgun can be carried under state and federal law. The Department is already working to compile this summary.

**Section 8** requires the Department to process the permit if the permittee is otherwise eligible without having to wait for weeks or months for the F.B.I. to complete fingerprinting checks. The Department is given authority to immediately revoke a conditional permit whenever it receives information from checking fingerprinting that makes the permittee ineligible. This conforms statute to what the Department of Public Safety already does in practice.

**Section 10** simplifies the standards for qualifications to apply for a permit.

Under existing law, in order to carry openly you must be 21 years of age or older and be allowed by state or federal law to own or possess a handgun. Those under 21 can carry with their parent's permission.

Under existing state law, in order to carry concealed during outdoor activities, in your dwelling, in your business, where you are employed or on land owned or leased by the person (see AS 11.61.220) you must be 16, and you must be allowed by state and federal law to own or possess a firearm.

Under existing law, in order to carry concealed in other places than those mentioned above, you must acquire a permit. If SB141 is passed, in order to do that you must be 21, you must be allowed by state and federal law to own or possess a firearm, you must be a 90 day resident of the state immediately preceding your application for a concealed handgun permit, you must receive training and education and you must demonstrate competence with a handgun.

**Federal and state law already address who may own or possess a handgun. In addition, SB141 prohibits anyone convicted of two Class A misdemeanors in the last six years from applying for or retaining a concealed carry permit. The Department of Public Safety strongly supports this provision in SB141.**

**Section 12** simply reduces the fees from \$125 to \$99 for initial application and from \$60 to \$30 for renewal or replacement to better reflect the true cost. Other States have even lower fees or no fees at all. This should still leave the Department with at least \$40 for processing each permit above the costs for F.B.I. and background checks.

**Section 13** amends language to clearly give the Department the authority to immediately suspend permits for anyone who is ineligible under state or federal law to own or possess a handgun.

**Section 14** amends language to increase from 5 to 6 years the time frame for disallowing repeat offenders. This provision is tougher than existing law.

**Section 16** repeals a long list of special prohibitions that don't apply to open carry or, in some cases, to concealed carry unpermitted. Instead, there is a flat prohibition for possession of a concealed handgun wherever federal or state law prohibits possession of a handgun. (Senator Phillips proposed the language in (a)(1) of this section)

**A restrictive laundry list of prohibitions tailored only for the fingerprinted, trained, permitted carriers make little sense when state law allows you to carry openly in those places. Federal and state law already address where handguns can be possessed. In addition, any private business has the right to post signs prohibiting carrying handguns whether concealed or open (See Senate Finance testimony by Dean Guaneli, Department of Law and March 24 and April 29 memos from Legislative Legal counsel). State or public offices may also post signs. The penalty for violating these provisions is criminal trespass.**

**Section 17** simplifies definitions so that shotguns, rifles and all weapons prohibited under AS 11.61.200 do not qualify for concealed carry. Otherwise, just as in every other state, any handgun not otherwise prohibited by state or federal law is treated equally. There are no examples, apparently, anywhere in the United States, where a permittee has used a derringer or "miniature" handgun in a crime. (See Tennessee Law Review, page 707)

**Section 18** repeals renewal training requirements; sections no longer justified under the principle "where you can carry open, you can carry concealed." AS 18.65.715(b), 18.65.725(a)(3), and 18.65.755(b).

**Sections 4, 6 and 9 are included to make special provisions for certain peace officers and carrying concealed. While there are objections to making special provisions for certain individuals, it is not unreasonable to amend the bill to provide special exemptions for peace officers. This especially seems reasonable in light of the increasing support from peace officers and their organizations for the concept of concealed carry by law-abiding citizens.**

**We urge the adoption of SB141 to continue the excellent record set this year by the Legislature toward reducing government regulation and taking practical steps to make Alaska's government smaller and smarter.**

Concerned w/ sections 10, 13, 16

In the debate thus far, we have been characterized as either being afraid of guns or as being "sitting ducks" ripe for someone to blow us away because he knows we are without weapons. We refute both of those characterizations.

We refute the notion that the use of violence is the only way to end violence. Choosing to exert our belief in creating peace through non-violence, does not mean that we are weak or defenseless. On the contrary, choosing to challenge the systems that are in place through the use of violence- struggling against the mainstream demands strength.

Shelters are places of refuge, of sanctuary. Places where skills of dialogue, negotiation, fairness, truth-telling, and sharing are practiced. We actively pursue peace-making through developing the principles of mutuality, trust, respect, tolerance, cooperation, and right actions.

We are not sitting behind locked doors afraid of the shadows, unwilling to be violent ourselves, but willing to have others-law enforcement for example- act violently for us. <sup>In</sup> We are working to protect ourselves by fundamentally changing the way in which individuals act with each other. Shelters work toward creating microcosms of what we want society to become.

We are working to create peace by calling people away from the might is right mentality; calling people away from the notion that there is a finite amount of power that can be realized so that for me to have more you must have less; calling people away from instilling fear as an acceptable way to achieve what they want; calling people away from protecting themselves at the expense of others.

We call people to the belief that power is infinite within each individual; exerting who you are is not a threat to who I am. We call people to a different journey.

Because we work to carry out our vision does not mean that we ignore the real world. We are not naive. We see clearly the ugliness that is here, most of us touch it daily-bruises, broken bones, fractured spirits, children's empty eyes, death. We arm ourselves with knowledge, with companions, with the belief in the possible, with our willingness to stand for peace.

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## MEMORANDUM

April 29, 1997

**SUBJECT:** Possession of Firearms (Work Order No. 20-LS0706\C)

**TO:** Senator Lyda Green  
Attn: Tuckerman Babcock

**FROM:** Gerald P. Luckhaupt *GL*  
Legislative Counsel

RECEIVED  
APR 29 1997  
Ans'd.....

You have asked where state and federal law prohibit the carrying of open and unconcealed firearms by an adult who is not a felon or who otherwise suffers any other legal disability or impediment to possession of a firearm. While I believe I can identify most of the places where openly carried firearms cannot be carried under state law, I can only attempt to identify all of the places where federal law prohibits the carrying of firearms due to the time constraints presented with the production of this memorandum.<sup>1</sup>

### State Law

#### Places

**AS 11.61.210(a)(7)** prohibits the possession of a firearm within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, secondary school, or while participating in a school sponsored event, without the permission of the chief administrative officer of the school or district.

**AS 11.61.220(a)(2)** prohibits the possession of a firearm on the person in any place where intoxicating liquor is sold for consumption on the premises.

**AS 11.61.220(a)(4)** prohibits the possession of firearms within the grounds of or on a parking lot adjacent to a child care center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children.

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<sup>1</sup>This memorandum does not attempt to identify the situations when the discharge of a firearm is unlawful, even though the possession of the firearm in that situation may be lawful. See, e.g., AS 11.61.190(a)(2).

While I have not attempted to scour the state administrative code to discover regulations restricting the possession of firearms, I can point out a few such instances. **17 AAC 40.040(b)** prohibits the possession of loaded firearms at airports. The schedule for the Alaska Marine Highway System provides that passengers may not possess firearms, although I have not identified the regulation that prohibits the possession of firearms by passengers. **17 AAC 70.110(1)(D)** does provide the ferry system with the authority to refuse to transport "any person who, in the opinion of the master of the vessel, might jeopardize the safety of the vessel or passengers or bring extreme discomfort to other passengers." The Alaska Court System has promulgated a policy that prohibits the possession of firearms in court facilities. The Juneau Empire carried a story a few weeks ago concerning the possession of firearms in the Capitol wherein a policy promulgated by Legislative Council was described that prohibited the possession of firearms in the Capitol. I do not have other information about this policy but I am making inquiries.

#### Circumstances

**AS 11.61.190(a)(1) and 11.61.195(a)(1)** prohibit the use or possession of a firearm during the commission of an offense under our controlled substance laws, AS 11.71.010 - 11.71.040.

**AS 11.61.200(a)(3)** prohibits the possession of a "prohibited weapon" which includes silencers and fully automatic firearms. See AS 11.61.200(f).

**AS 11.61.200(a)(7)** prohibits the possession of a firearm while the possessor's condition is impaired by liquor or controlled substances when the person is committing a violation of AS 11.46.320, trespass in the first degree.

**AS 11.61.200(a)(8)** prohibits the possession of a firearm while a person is committing trespass in the first or second degrees, AS 11.46.320 - 11.46.330, in violation of a domestic violence restraining order.

**AS 11.61.200(a)(9)** prohibits the possession of a firearm while the possessor is communicating with another person in violation of AS 11.56.740, violating a domestic violence restraining order.

**AS 11.61.210(a)(1)** prohibits the possession of firearm while the possessor is impaired by alcohol or controlled substances.

**AS 11.56.375(a)(1)** prohibits a person from taking a firearm into a correctional facility.

Senator Lyda Green

April 29, 1997

Page 3

Federal Law

**18 USC 922(q)**, the 1996 Gun-Free School Zones Act, prohibits the possession of firearms within a school zone, unless the possessor qualifies for one of the delineated exceptions.

**18 USC 930** prohibits the possession of firearms in federal facilities.

**49 USC 46303** prohibits the possession of a firearm when attempting to board an aircraft.

**49 USC 46505** prohibits the possession of a firearm on board an aircraft.

**14 CFR 107.21** prohibits the possession of a firearm when entering or in a sterile area of an airline terminal.

Contrary to the normal policy in the other 49 states, firearms may normally be possessed in National Parks in Alaska, "in accordance with applicable Federal and State laws, except where carrying is prohibited or otherwise restricted pursuant to [36 CFR 13.30]." 36 CFR 13.19(b).

While I have attempted to be as thorough as possible there quite possibly could be additional restrictions. Please do not consider this list as definitive on the subject.

GPL:jdr:glc

97-304.jdr

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## MEMORANDUM

March 24, 1997

**SUBJECT:** Possession of Concealed Weapons (SB 141)  
**TO:** Senator Lyda Green  
Attn: Tuckerman Babcock  
**FROM:** Gerald P. Luckhaupt *GPL*  
Legislative Counsel

RECEIVED  
MAR 24 1997  
Ans'd.....

You have asked where and when concealed weapons, particularly handguns, may be carried under Alaska law without a concealed handgun permit?

AS 11.61.220(a)(1) makes it a crime to "knowingly possess a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person. . ." Various defenses and affirmative defenses are supplied. First, this section does not apply to a peace officer acting within the scope and authority of the officer's employment. AS 11.61.220(c). AS 11.61.220(d) provides a defense to a person who possesses a concealed weapon on business premises owned or leased by the person or on business premises in the course of the person's employment for the owner or lessee of the premises. Finally, AS 11.61.220(b) provides affirmative defenses allowing a person to possess a concealed weapon in the person's dwelling or on land owned or leased by the person or while engaged in "lawful hunting, fishing, trapping, or other outdoor activity that necessarily involves the carrying of a weapon for personal protection."

AS 11.61.220(a)(2) also makes it a crime to possess a loaded firearm on the person (regardless of whether the firearm is concealed or not) in any place where alcoholic beverages are sold for consumption on the premises. AS 11.61.210(a)(1) provides that it is illegal to possess on the person (again, regardless of whether the firearm is concealed or openly displayed) or in the interior of a vehicle in which the person is present, a firearm when the person is impaired by intoxicating liquor or controlled substances. Finally, AS 11.61.210(a)(7) provides that a person may not possess a deadly weapon on school grounds without permission of the chief administrative officer of the school or district.

GPL:jdr  
97-211.jdr

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COPY

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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 24, 1997

**SUBJECT:** Persons Prohibited from Possessing Firearms under Federal and State Law (SB 141)

**TO:** Senator Lyda Green  
Attn: Tuckerman Babcock

**FROM:** Gerald P. Luckhaupt  
Legislative Counsel

You have asked who is prohibited under state or federal law from possessing a firearm?

**Under Federal Law**

18 U.S.C. § 922(g) provides:

- (g) It shall be unlawful for any person--
  - (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
  - (2) who is a fugitive from justice;
  - (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
  - (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
  - (5) who, being an alien, is illegally or unlawfully in the United States;
  - (6) who has been discharged from the Armed Forces under dishonorable conditions;
  - (7) who, having been a citizen of the United States, has renounced his citizenship; or
  - (8) who is subject to a court order that--
    - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
    - (B) restrains such person from harassing, stalking, or threatening an intimate partner or such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a creditable threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.<sup>1</sup>

#### Under State Law

AS 11.61.200(a)(1) provides that it is unlawful for a person to knowingly possess

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that: <sup>1</sup> Under the federal law, "misdemeanor crime of domestic violence" means a crime

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Senator Lyda Green  
March 24, 1997  
Page 3

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.<sup>2</sup>

There is no general ban in Alaska on the possession of long rifles or shotguns for persons convicted of felonies. Absent a special condition of probation or parole a felon could possess these long weapons without violating state law. Absent the conviction of a felony, persons may be prohibited from possessing firearms as a condition of release before trial for a crime (whether felony or misdemeanor) or through a domestic violence protective order.

GPL:jdr  
97-210.jdr

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<sup>2</sup>AS 11.61.200(b)(1) provides an affirmative defense to a person accused of violating AS 11.61.200(a)(1) 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;

# MEMORANDUM

State of Alaska

Department of Law


TO: Ronald L. Otte  
Commissioner  
Department of Public Safety

DATE: July 12, 1995

FILE NO.: 663-95-0323

TEL. NO.: 465-3428

SUBJECT: Enforcement of criminal trespass  
statutes in connection with concealed  
handguns

FROM:  Dean J. Guaneff and Margot O. Knuth  
Assistant Attorneys General  
Criminal Division, Central Office

By memorandum dated December 21, 1994, you have requested advice as to whether a private business may bar from its premises someone who is carrying a concealed handgun and, if so, whether a person who nonetheless enters the business with a concealed handgun is guilty of a criminal offense. You have also requested advice as to whether a criminal offense is committed when a person carries a concealed handgun into a retail store that contains a branch office of a bank, in view of the new statute that prohibits concealed handguns from being carried into "financial institutions."

The Department of Law cannot provide legal advice to private parties, and consequently private businesses with questions about concealed firearms should contact their own legal advisors regarding their rights and liabilities for protecting patrons of their business and issues regarding employees of their business, civil actions for trespass<sup>1</sup> and general landlord and tenant matters.<sup>2</sup> Your question, however, is what action, if any, troopers should take when they receive a complaint about a person carrying a concealed handgun on private business premises. The following is our advice.

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<sup>1</sup> This memorandum addresses criminal trespass laws only and we express no opinion on the ability of private persons to maintain a civil suit for trespass. *See Brown Jug, Inc. v. International Brotherhood of Teamsters*, 688 P.2d 932, 937-38 (Alaska 1984) (in civil action, intentional entry onto land of another constitutes intentional trespass even if trespasser believes that he or she has the right to be on the land).

<sup>2</sup> This department has previously opined, in response to questions from the legislature, that a landlord has a right to prohibit firearms on leased property. 1983 Inf. Op. Att'y Gen. (Jul. 1; 366-444-83).

## I. Summary

The short answer to your first question is that it may, depending on the circumstances, be illegal under the state criminal trespass statutes for a person to carry concealed handguns on private business premises, even though the person has a permit for the weapon. The short answer to your second question is that clear demarcation of bank premises and notice to patrons are important considerations in enforcing the concealed handgun law on bank premises within larger stores. Issues regarding automatic teller machines and other premises of financial institutions will be discussed below. Before reaching these issues, however, we will first discuss the impact of the newly-enacted concealed handgun statutes on state criminal trespass laws.

## II. Discussion

### A. The Concealed Handgun Statutes Do Not Prevent Private Property Owners From Relying On Criminal Trespass Laws To Control Access To Their Premises

Under AS 11.61.220, it is a crime for a person to carry a concealed handgun unless the person is a peace officer, is on the person's own property, is engaged in a lawful outdoor activity requiring a weapon for protection, or has obtained a permit under the new statutes set out in AS 18.65.700 -- 18.65.790. Even if a person has obtained a permit to carry a concealed handgun, there are several types of places where these guns cannot be carried. AS 18.65.755(c) makes it a class B misdemeanor for a person with a permit to possess a concealed handgun in one of these legislatively designated areas.<sup>3</sup>

The first question that you have asked is whether there are any other premises that can be designated as off-limits for concealed handguns, even though they do not appear on the list of prohibited premises in AS 18.65.755. We believe that there are.

Alaska has a criminal trespass statute, AS 11.46.330, which makes it a crime to enter or remain on premises when a person is not privileged to do so or has been directed to leave. It provides as follows: "A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully (1) in or upon premises; or (2) in a propelled vehicle." AS 11.46.330. AS 11.46.350 defines "enter or remain unlawfully" as meaning to "(1) enter or remain in or upon premises . . . when the premises . . . at the time of the entry or

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<sup>3</sup> These places include, among others: law enforcement or correctional facilities, school grounds, courthouses, certain governmental buildings, portions of airline terminals, and residences where an appropriate notice has been given by oral statement or by a conspicuous notice. AS 18.65.755.

remaining is not open to the public and when the defendant is not otherwise privileged to do so; [or] (2) fail to leave premises . . . that is open to the public after being lawfully directed to do so personally by the person in charge."

These statutes give property owners the right to exclude a person from their property for any reason. That reason can include carrying a concealed handgun, even with a permit, unless the concealed handgun permit laws are interpreted as somehow superseding this aspect of the criminal trespass laws. It is therefore necessary to consider whether the legislature's enactment of AS 18.65.755 impliedly repealed the criminal trespass statute (and any municipal ordinance prohibiting criminal trespass) as applied to the carrying of concealed handguns. As explained below, we do not believe that AS 18.65.755 prevents property owners from choosing to exclude persons carrying concealed handguns, even if the person has a permit, and, accordingly, those who enter or remain on property with a concealed handgun despite the owner's request that they leave can be prosecuted for criminal trespass.

To determine whether a prior statute has been impliedly repealed, Alaska's courts look to the intent of the legislature in passing the new statute to determine if there is an irreconcilable conflict between the two. *Peter v. State*, 531 P.2d 1263, 1268 (Alaska 1975). Although the supreme court will not automatically apply the common law presumption against implied repeals, the court has quoted from a well-respected commentator who notes that "[t]he presumption has . . . special application to important public statutes of long standing." *Id.* (quoting 1A J. Sutherland, *Statutes and Statutory Construction* § 23.10 (4th ed. Sands 1972)).

Criminal trespass laws are important public statutes that protect private property rights by allowing owners to choose who may enter or remain on their premises. Although there are limits on the extent to which private property owners can control free speech on portions of their premises that have become the functional equivalent of public property (*see, e.g., Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980)), there are no similar limitations in Alaska law on the ability of businesses to prohibit firearms or smoking on the premises, or to require a dress code or otherwise require that patrons behave in a way that is believed by the business owner to be appropriate for operation of the establishment or for preserving the safety and comfort of other patrons.<sup>4</sup>

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<sup>4</sup> We note that the Alaska Constitution was recently amended to create an "individual" right to bear arms that is not to be infringed by state or local government. Art. I, § 19, Alaska Const. We conclude that this amendment does not prevent private persons from setting rules of conduct for their own property. For example, the Alaska Supreme Court has declared that ingesting substances (such as smoking tobacco) is constitutionally protected, *Gray v. State*, 525 P.2d 524 (Alaska 1974), as is choosing how to appear and what to wear, *Breese v. Smith*, 501 P.2d 159 (Alaska 1972). Nonetheless, private  
(continued...)

Also, criminal trespass laws have been part of Alaska society for many years. The present Model Penal Code formulation of the criminal trespass statute has been part of Alaska law since 1980, and earlier criminal trespass statutes were part of the Alaska criminal code since well before statehood.<sup>5</sup>

Given the importance and long history of these laws, it is probable that the Alaska courts would impose a presumption against the implied repeal of the criminal trespass statutes. Even if no presumption is applied, however, it is unlikely that a court would find that the concealed handgun statutes impliedly repealed the criminal trespass statutes to the extent of prohibiting businesses from excluding concealed handguns on their premises.

There is nothing on the face of the concealed handgun statutes in general, or in AS 18.65.755 in particular, that is inherently inconsistent with the criminal trespass statute set out in AS 11.46.330. The concealed handgun statutes create a detailed statutory scheme for obtaining permits to carry concealed handguns. They also create a large number of *new* offenses for carrying concealed handguns in certain designated areas or for misusing the permit. See AS 18.65.760; AS 18.65.765. The criminal trespass statute, on the other hand, gives private property owners the right to ensure that their property is used in the manner they choose. These purposes are not in conflict.<sup>6</sup> We accordingly conclude that AS 11.46.330, as applied to persons

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<sup>4</sup>(...continued)

businesses indisputedly may ban smoking and impose dress codes. This is because the constitutional rights in Article I of the Alaska Constitution (like the Bill of Rights in the United States Constitution) are limitations on the power of government, rather than on the actions of private persons. *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 1129-30 (Alaska 1989).

<sup>5</sup> See former AS 11.20.610, AS 11.20.630 and AS 11.20.650. The Revised Criminal Code replaced these earlier, more specific laws with broader provisions so as to eliminate a "needless proliferation of statutes." *Alaska Criminal Code Revision*, Tentative Draft, Part 3, Offenses Against Property (April 1977) at 59.

<sup>6</sup> The legislative history of AS 18.65.755 discloses that an unsuccessful attempt was made in the House of Representatives to expand the list of prohibited premises to include retail establishments and other places that post signs prohibiting entrants from carrying concealed handguns. See Amendments 2 and 3 offered to CSHB 351(FIN) on April 15, 1994. House Journal at 3471-73 (1994). It is rarely appropriate to infer legislative intent from the defeat of a proposed amendment. Its defeat may mean only that legislators wanted to ensure that some areas would be off-limits to concealed handguns, regardless of whether a person carrying a concealed handgun noticed that a sign had been posted, while in other areas it is to be left to the discretion of the property owner whether to allow patrons to carry concealed handguns.

carrying concealed handguns, should not be interpreted as having been impliedly repealed by AS 18.65.755.<sup>7</sup>

#### B. Alaska's Criminal Trespass Laws

AS 11.46.330 makes it the crime of criminal trespass in the second degree, a class B misdemeanor, to "enter or remain unlawfully" in or upon land, buildings or propelled vehicles. Under AS 11.46.350, the phrase "enter or remain unlawfully" is defined to include

(1) for premises *not open to the public*, entering or remaining "when the defendant is not otherwise privileged to do so"; and

(2) for places *open to the public*, "fail[ing] to leave . . . after being lawfully directed to do so personally by the person in charge."

These two provisions differ slightly with regard to the type of notice that must be given to a person before that person may be deemed to have entered or remained unlawfully. We will first discuss places "*not open to the public*," and then places "*open to the public*."

##### 1. Places Not Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that are *not open to the public*, are: (1) that the person knowingly entered or remained in the place with a concealed handgun, (2) that the person was not privileged to enter or remain in the place with a concealed handgun, and (3) that the person entered or remained with reckless disregard as to whether or not he or she was privileged to do so.

Whether a place is "*not open to the public*," for purposes of the criminal trespass statute, is a question ultimately to be decided by the factfinder in each specific criminal case and we accordingly will not attempt to try to list all the places that are "*not open to the public*." The term, however, almost certainly includes (1) private offices, (2) offices that require an

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<sup>7</sup> Our conclusion is bolstered by the analogy that can be made to the state's public drunkenness statutes. In *Peter v. State*, the Alaska Supreme Court held that the Uniform Alcoholism and Intoxication Treatment Act in AS 47.37 impliedly repealed Alaska's drunk-in-public law. The court found that the legislature's *expressed* intent in adopting the Uniform Act was to stop criminally punishing drunks and to rehabilitate them instead. 531 P.2d at 1271. This holding, however, has no impact on the ability of business owners to invoke the criminal trespass laws against drunks who are asked to leave the premises and refuse to do so.

appointment (such as doctor or dentist offices), (3) places reserved for residents or authorized guests of residents (such as nursing homes),<sup>8</sup> (4) places for employees or authorized personnel only, (5) places that are limited to only members or authorized guests of members (such as members-only stores or clubs), and (6) premises that are normally open to the public, but closed for special occasions (for example, restaurants closed for a "private party"). *Johnson v. State*, 739 P.2d 781, 783 n.1 (Alaska App. 1987).

The simplest element of the offense of criminal trespass is whether the person knowingly entered or remained on the premises. Unless a person has entered a place by mistake, or for some reason is unaware of his or her location, this element can easily be proven.<sup>9</sup>

Assuming that a person has a permit to carry a concealed handgun, whether that person is privileged to carry the gun onto premises that are not open to the public depends on the policies of the office, theater, sporting event, or other premise operator. The prohibition against bringing guns onto the premises must be an official policy of the organization or be imposed by someone managing the premises.<sup>10</sup>

Whether or not a person entered or remained in reckless disregard of a lack of privilege depends on the type of notice provided. Although the statutory definition of "reckless" in AS 11.81.900(a) requires only awareness and disregard of a *risk* that the circumstance (in this case, a lack of privilege) exists, most juries will likely want proof that the person actually *knew* he or she was prohibited from carrying a concealed handgun on the premises.

The strongest evidence that a person knew he or she was not allowed to enter or remain on the premises with a concealed handgun is if the property manager or an agent of the manager provides this information to the person in a face-to-face conversation or by telephone.

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<sup>8</sup> *But see Steele v. Breinholt*, 747 P.2d 433 (Utah App. 1987), in which the issue of whether a nursing home was open to a particular visitor was deemed to be question of fact for the jury.

<sup>9</sup> In most instances, a person both enters and remains either with or without the permission of the property owner. In some cases, however, a person may initially enter with the permission of the owner but thereafter lose that permission.

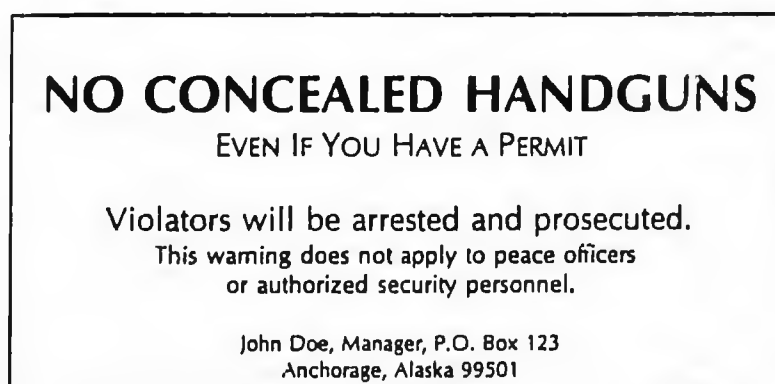
<sup>10</sup> There is nothing, however, that precludes an organization from applying different rules at different times. For example, an arena or convention center may choose to allow guests to carry firearms, including concealed handguns, at a gun collectors show, but prohibit concealed weapons at a rock concert. It is also permissible for an organization to allow peace officers or other authorized persons (such as security guards) to carry concealed handguns, but prohibit other persons from carrying them.

Proof of a written communication of this information would also establish the fact. For example, in *Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), the court upheld a criminal trespass conviction against a skier on the basis of a letter that the Alyeska Ski Resort had written to him, barring him from the resort for the remainder of the season because of the danger posed by his reckless conduct.

Alternatively, a business may communicate the information by placing a placard at each of its entrances. The Alaska Statutes specify the size and contents of a notice against trespass in AS 11.46.350(c).<sup>11</sup> The notice must be "printed legibly in English," be "at least 144 square inches in size," contain "the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property," and be "placed at each . . . way of access onto the property." AS 11.46.350(c)(1) -- (4).<sup>12</sup>

There may, however, be circumstances under which a posted notice described in AS 11.46.350(c) may not be visible enough and therefore it will be difficult to prove that the entrant had actual knowledge. For example, persons seeking admission to a crowded auditorium may not be able to see a sign of the statutory minimum 144 square inches (12 inches by 12 inches). Or a person who enters an office or a "members-only" store for the first time may not notice a small sign. In these situations, one option would be for the business to increase the size of the sign.

In terms of the content of the notice, the following is an example of language that might be used:



<sup>11</sup> AS 11.46.350 was enacted with other statutes in ch. 168, SLA 1988, dealing with trespasses to unoccupied land. Its terms, however, are not explicitly limited to unoccupied land.

<sup>12</sup> See also AS 18.65.755, setting out similar requirements for the posting of notice by homeowners that permittees are prohibited from bringing concealed handguns into their homes.

Organizations that wish to preclude firearms generally should use the phrase "no firearms" instead of "no concealed handguns."

There are a myriad of alternative means that may be used by businesses to provide the necessary notice. For example, a business may decide to give out handbills to persons entering the establishment. A similar notice could be given at the time a ticket is purchased or an application for membership is obtained. Alternatively, in theaters, sporting events, or members-only stores, it would seem to be a simple matter to print a written warning (similar to the sample sign set out above) directly on the admission ticket or membership card.

It would be difficult to list all the ways in which the necessary notice can be given, and it is impossible to predict all of the defenses that might be raised by persons claiming they were unaware that they did not have a privilege to possess firearms on the premises. State troopers investigating cases of trespass will have to determine whether, based on all the circumstances, there is evidence establishing that the person was aware of the prohibition.

## 2. Places Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that *are* open to the public, are: (1) that the person knowingly entered or remained in a place with a concealed handgun, (2) that the person was directed to leave personally by the person in charge or someone authorized by the person in charge, and (3) that the person recklessly disregarded the lawful order not to remain. *Johnson v. State*, 739 P.2d at 783-84.

Again, the element of whether the person knowingly entered or remained in the place is easily proven.

The second element, that the person was "directed to leave personally," is more difficult. A prosecution cannot easily be based on notice provided solely by a sign posted at an entryway. Notice, however, will be sufficient if the business owner, or the person in charge, acts through an agent to provide actual notice. *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073, 1077 (Alaska 1981). As before, a face-to-face or telephone conversation is the clearest example of personal notice. It is likely that most cases of criminal trespass that require trooper involvement will occur *after* a person has been told not to bring a firearm into an establishment. This advisement should be deemed to remain in effect until rescinded.

As in *Johnson*, a letter directed to the person will also suffice under this subsection of the criminal trespass statute. Similarly, a handbill given to an entrant will also be

sufficient. The adequacy of other types of personal directions (for example, an announcement made over a loudspeaker) will depend on the circumstances.

If there is sufficient evidence that the person was personally directed to leave, then there should be no problem proving the final element, that the person recklessly disregarded that direction. The lawfulness of an order to leave — like other legal issues — would seem to be a question for a judge, rather than a question of fact for the jury to decide.<sup>13</sup>

### C. The Defense of "Necessity" Is Not Available

Persons who carry concealed handguns often claim they are doing so for purposes of self-defense. It is foreseeable that a person charged with criminal trespass may try to raise the defense of "necessity." Thus, for example, a defendant charged with criminal trespass for refusing to leave premises when asked to do so by an owner who objects to the presence of concealed weapons may argue that his "need" to carry a concealed handgun outweighs the owner's interest in barring the presence of such weapons on the premises.

The defense of "necessity" is governed in Alaska by the common law and by AS 11.81.320. In accordance with these authorities, it is only rarely, if ever, that the defense of necessity will justify a person's possession of a concealed handgun on premises where such possession is prohibited by the owner.<sup>14</sup> See *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073 (Alaska 1981) (defense of necessity to "preserve life" rejected in trespass case arising from

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<sup>13</sup> But see *Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), in which the court indicated that the lawfulness of the order was a "circumstance" in the case that the jury could review. It is not clear what the *Johnson* court meant by this. The court observed that, under the facts in that case, the defendant could claim he was not reckless because he reasonably questioned the "validity" of a warning letter. We believe that the technical lawfulness of an order is a question for a judge to decide. *Johnson*, however, suggests that the reasonableness of the defendant's belief with respect to that order is a question for the jury. In the rare case in which there may be a question about the legality of an order to leave (e.g., a property owner changes the terms of a lease in the middle of the tenancy), a judge would be the more appropriate one to decide the issue than a jury.

<sup>14</sup> It is at least theoretically possible for a "necessity" defense to arise if, for example, a person with a concealed weapon were chased by attackers into a prohibited area. In the unlikely event that the person were prosecuted for trespass for entering the prohibited area, a defense of "necessity" or perhaps duress would be applicable. Note, however, that prisoners who escape can raise a defense of "necessity" if they were in danger in prison, but they must then turn themselves in and inform authorities immediately, or else justify their continuing absence. *Wells v. State*, 687 P.2d 346 (Alaska App. 1984). Like escape, criminal trespass is a continuing offense that would have to be justified.

defendant's refusal to leave an abortion clinic); *Bird v. Municipality of Anchorage*, 787 P.2d 119 (Alaska App. 1990) (abortion clinic trespass case). Nonetheless, we recommend that the investigating officer provide a suspect with the opportunity to explain why the suspect thought it was necessary to carry a concealed handgun onto the premises in contravention of the owner's explicit directions.

D. "Financial Institutions" under AS 18.65.755

Under AS 18.65.755(a)(11), a person with a permit to carry a concealed handgun is prohibited from carrying the gun "into . . . a financial institution." The statute defines "financial institution" as a "bank, savings bank, savings association, credit union, or other institution regulated by the Department of Commerce and Economic Development under AS 06."

You have asked whether a branch office of a financial institution fits within the prohibition of AS 18.65.755(a)(11) when the branch office is located within a larger retail store that is not a "financial institution." We conclude that a branch office of a bank is a financial institution under AS 18.65.755. This, however, does not mean that the entire retail store enclosing the branch office automatically becomes a financial institution for purposes of the prohibition set out in the concealed handgun law.

If the bank branch office is physically separated from the remainder of the store by walls or other barriers, then the statutory prohibition against carrying concealed handguns into a financial institution applies to that separate area, but not to the surrounding store. If the branch office is not physically separated from the remainder of the store, we believe that the prohibition set out in AS 18.65.755 applies only to those areas where a patron of the bank deals face-to-face with a bank employee, or in those waiting areas where patrons of the bank congregate or line up to wait to see a bank employee. In either situation, it is advisable for notice (through use of a sign or one of the other means discussed above) to be provided to the customers of the bank that concealed handguns or firearms are not allowed in that area.

A related question is whether drive-up teller windows, outdoor automatic teller machines, and bank parking lots are included within the term "financial institution" for purposes of AS 18.65.755. We believe that drive-up teller windows and automatic teller machines fall within the ambit of that term, while bank parking lots do not.

This, however, does not end the inquiry. For purposes of AS 18.65.755(a)(11), the key question about drive-up teller windows and outdoor automatic teller machines is whether the person using that service has come "into" a financial institution. We conclude that a person who uses a drive-up teller window has not entered "into" a financial institution. Similarly, a person who uses an outdoor automatic teller machine, even one that is connected to a bank, has

not entered "into" the bank itself. On the other hand, if the automatic teller machine is located inside bank premises, or in a foyer or other entry to the bank, a person who uses such a machines has entered "into" the institution.

If a financial institution reports that a person is carrying a firearm in a parking lot or when using a drive-up window or outdoor automatic teller machine, then the state troopers may take action if the elements of the offense of criminal trespass have been met, as discussed in earlier sections of this memorandum (*e.g.*, notice has been provided to the patron, etc).

### III. Conclusion

For the reasons set out in this memorandum, we conclude that the state's criminal trespass laws can be used to arrest and prosecute a person who possesses a concealed handgun on private business premises, even if the person has obtained a permit for the concealed weapon, if the owner or management of the business has provided notice that concealed handguns (or all firearms) are prohibited on the premises.

We also conclude that a branch office of a bank that is located in a retail store is a financial institution under AS 18.65.755. If the branch office in the retail store has been physically separated from the rest of the store, through the use of walls or other types of dividers, then AS 18.65.755 prohibits a person from carrying a concealed weapon into the area. It is not a violation of AS 18.65.755, however, to carry concealed handguns to drive-up teller windows, outdoor automatic teller machines, or bank parking lots, although this conduct might constitute criminal trespass if all of the elements of that offense can be proven.

Please contact this office if you have further questions.

DJG/MOK/jf

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ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

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Senator Lyda Green  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

April 17, 1997

Dear Senator Green,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing language in Senate Bill 141 waiving the permit process for Alaska certified and visiting out-of-state police officers on official business to carry concealed handguns, and the relaxation of the permit process for retired Alaska police officers.

At a recent meeting of the APOA State Board Legislative Subcommittee, we reviewed other language in SB 141 and do not oppose other sections of the bill except for:

- 1) Reciprocal acceptance of other out-of-state CCW permittees. We believe that Alaska has a thorough screening process for permittees which is not the case for a good portion of the other states.
- 2) We believe NO convicted felon should ever be allowed to apply for a CCW permit.
- 3) We believe the permit fees should remain the same.

We look forward to working with you further on this legislation. Please feel free to call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,

Michael Corkill  
APOA State President

Post-It® Fax Note	787	Date	# of pages ▶
To	Sen. Lyda Green	From	Michael Corkill
Co./Dept.		Co.	
Phone #		Phone #	
Fax #	465-3805	Fax #	451-5317

4-14-97

Honorable John Torgerson  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

Dear Sir,

I wish to express my support of Senate Bill 141 proposed by Senator Green. Before I proceed further let me briefly state that I have been an Alaskan police officer for nearly twenty years and I am currently Chief of Police for the Valdez Police Department. I have been a member of the Alaska Police officer's Association since my arrival in Alaska and am currently a member of the Alaska Association of Chiefs of Police. My contacts with "road" police officers indicate that there is overwhelming support for the right of good citizens to legally carry concealed handguns. The observation from the street officer is that troublemakers do not go through the necessary steps to carry legally.

There have been concerns raised regarding some of the changes this bill would provide. Many of these issues are already covered by other statutes or sections of the existing statute. The Misconduct Involving Weapons Statute already covers drinking and firearms. Allowing CCW holders to enter a licensed premise restaurant with their firearm does not allow them to become intoxicated. A person doing so would be in violation of Misconduct Involving Weapons In The Fourth Degree whether or not they had a permit.

Another section addresses honoring out of state permits. CCW permits are not casually issued in any state (Vermont excepted, more later). Virtually all states require background checks. We honor out of state driver's licenses without question and most CCW permits are much more difficult to obtain. The "Vermont Issue" has been mentioned regarding Vermont's allowance of any citizen in good standing to carry concealed. This is an interesting point but I would like to ask how many Vermont citizens have been arrested in the state of Alaska for Misconduct Involving Weapons within the last ten years? As the old saying goes, "we have come up with an ingenious solution to a non-existent problem."

The original statute did not allow carry at banks and financial institutions. I found this very interesting since that is one of the main reasons for issuance in other states. I have heard merchants express dismay that they cannot use their cow when delivering large cash business deposits to their bank. For many this is the main reason they went through the process.

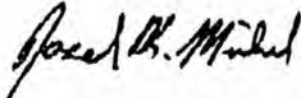
The legal carry of concealed weapons by good Alaskans is not a problem for Alaska Law Enforcement. The criminal element will carry and use weapons and not bother worrying about

the legality of their conduct.

As I previously stated, I have been a member of the major police organizations in the state. APOA and the Chief's Association have opposed previous ccw bills. I would like to see these organizations poll their members prior to taking a stand on major issues. I have never been asked where I stand on this or any other issue going to the legislature by either organization. I have never talked to any other "road officer" who has been polled.

Thank you for your time and consideration.

Respectfully,



Chief Joseph K. Michaud  
Valdez Police Department

SYNOPSIS

SFIN

TESTIMONY

# Concealed weapon law gets police support

By MARK SABBATINI

THE JUNEAU EMPIRE

Weapons instructors and police officials gave their support today to a bill expanding where carriers of concealed handgun are allowed.

A controversial provision allowing some convicted felons to obtain permits has been removed.

Carriers of concealed handguns would be allowed into the same locations as those who carry weapons openly, including domestic violence shelters, banks and government buildings. Sen. Lyda Green, a Wasilla Republican sponsoring Senate Bill 141, said the state's 6,000 permit holders faced stricter requirements and no license has been revoked for misuse of a weapon.

About 15 people voiced support for the bill during a hearing by the Senate Finance Committee today.

"I think law abiding citizens checked out by the FBI should be allowed to carry concealed handguns into banks and have a handgun on school property to drop off their children," said Rod Christopher, a Kenai resident who has been a weapons instructor for 18 years. "No guns in the schools, of course."

Opponents have expressed concern about provisions allowing residents from other states to carry weapons for up to 90 days without notification and about where carriers would be allowed. Among the few opponents testifying against the bill today was Lauree Hugonin, executive director of the Alaska Network on Domestic Violence and Sexual Assault, who said eliminating certain restrictions leaves only

vague language where a weapon involved in a domestic violence situation is seized.

"That wouldn't necessarily be a handgun or apply to other weapons the person may have access to," she said.

The bill reduces application and renewal fees, requires a temporary permit to be issued if federal background information has not been supplied within 30 days, and allows carriers into restaurants if they do not drink alcohol. Municipalities can vote to prohibit

it possession of concealed weapons.

Allowing out-of-state visitors to carry weapons, even if they haven't met Alaska's standards for a permit, didn't concern Joe Michaud, chief of the Valdez Police Department.

"We recognize out-of-state driver's licenses without question," he said. "Perhaps we could extend the same trust with concealed weapons."

The House still needs to consider the bill if the Senate approves it.

JUNEAU EMPIRE, FRIDAY, APRIL 18, 1997



# Study: Weapons laws deter crime

## Fewer rapes, killings found where concealed guns legal

By Dennis Cauchon  
USA TODAY

In a comprehensive study that may reshape the gun control debate, researchers have found that letting people carry concealed guns appears to sharply reduce killings, rapes and other violent crimes.

The nationwide study found that violent crime fell after states made it legal to carry concealed handguns.

- ▶ Homicide, down 8.5%.
- ▶ Rape, down 5%.
- ▶ Aggravated assault, down 7%.

The University of Chicago study, obtained by USA TODAY, is set to be released next Thursday. But its impending release has already sent shock waves through the gun-control debate because of the effect it may have on one of the most controversial areas of gun law. Since 1986, the number of

states making it legal to carry concealed weapons has grown from nine to 31.

The National Rifle Association has led this fight in state legislatures, arguing that concealed weapons deter crime.

Gun control supporters counter that these laws cost lives by increasing accidental deaths and impulsive killings.

The study analyzed FBI crime statistics in the nation's 3,054 counties from 1977 to 1992 to see if the introduction of concealed-weapons laws had any effect on crime.

The results overwhelmingly supported the idea that these laws deter violent crime.

The drop is not primarily caused by people defending themselves with guns, says John Lott, the study's author. Rather, criminals seem to alter their behavior to avoid coming into contact with a person who might have a gun.

Concealed-weapons laws have drawbacks, too, the study found. Auto theft and larceny increased. Criminals shifted to property offenses, in which contact with a victim is rare, says Lott.

"The policy implications are undeniable: If you're interested in reducing murder and rape, then letting law-abiding, mentally competent citizens

carry concealed weapons has a positive impact," says Lott.

Gun control backer Josh Suggs of the Violence Policy Center blasted the study: "Anyone who argues that these laws reduce crime either doesn't understand the nature of crime or has a preset agenda."

Lott, who spent two years on the study, says he sent his research to scholars who might disagree with him and made changes to satisfy the critics.

David Kopel, a gun control scholar who did a smaller study on the same issue, says, "Lott's study is so far ahead of all previous studies that it makes them all worthless."

GEORGE MAGAZINE  
APRIL 97  
PAGE 86



## SELF-DEFENSE JOHN LOTT

**G**un control advocates have long argued that the fewer guns there are, the less crime there will be. Now John Lott, an economist at the University of Chicago Law School, is making a compelling case that violent crime rates would actually fall if every sane nonfelon adult could pack heat. "The evidence is very convincing that allowing law-abiding citizens to carry handguns has a net effect in saving lives," Lott says.

In a recent study, Lott crunched crime statistics from the 31 states whose laws allow people to carry concealed weapons as long as they meet certain criteria (usually, not having a criminal record or a history of mental illness). He concluded that such laws led to an 8.5 percent drop in murder rates. If concealed weapons were legal nationwide, he argues, some 1,570 murders, 4,177 rapes, and 60,000 aggravated assaults could have been prevented in 1992 (the last year of the 16-year period covered by his study). Increases in unintentional gun deaths from concealed weapons, Lott says, are next to none. A lean six-foot-three 38-year-old, Lott speaks in professorial flat and passionless as his pronouncements are inflammatory. Pointing out the relatively low cost of guns, he says, "I don't think there's any type of deterrent that's been studied by economists that shows the same cost-benefit ratio."

Lott has a pistol at home, but he says he has no particular affection for guns or pro-gun affiliations. The Violence Policy Center in Washington, however, claims that "the Lott study is indelibly stained with the taint of the gun industry." The VPC says the "taint" results from alleged financial intimacy between the John M. Olin Foundation, which funds Lott's chair at U of C, and the Olin Corporation, whose Winchester division makes bullets. (Lott says he didn't know of any connection.) Meanwhile, Lott's work has won him new phone friends: "I get calls from people in Alaska who want to tell me about their gun collections."—Mike Steere

# TENNESSEE LAW REVIEW

A SECOND AMENDMENT SYMPOSIUM ISSUE

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## TENNESSEE LAW REVIEW

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## "SHALL ISSUE": THE NEW WAVE OF CONCEALED HANDGUN PERMIT LAWS\*

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What would happen if essentially all adults who passed a background check and safety test could qualify for a permit to carry a concealed handgun? About one-third of all states have adopted laws or practices that enable persons who are legally allowed to possess a handgun in their own home to be eligible for a license to carry a concealed handgun for protection. The laws require that after passing a background check (and sometimes a firearms safety class), eligible persons must be granted the permit if they apply. If the application is rejected, the burden of proof is on the non-issuing sheriff, police chief, or judge to show that an applicant is either unqualified or a danger to public safety.<sup>1</sup> Typically, about one to four percent of a state's population decides to obtain such a permit.<sup>1</sup>

This Article examines how these laws have been written to satisfy concerns about public safety. The Article specifically investigates the concern that more permits will lead to more needless killings. After analysis of all available data, the Article concludes that concealed carry laws can be enacted by states with little fear that such laws will compromise public safety. In some cases, such laws may even enhance public safety.

### I. A SHORT HISTORY OF CONCEALED HANDGUN PERMITS

In most of the United States, laws prohibiting concealed carrying of handguns without a permit are relatively recent. While some antebellum

1. See *infra* Part II.

In most of the United States, laws prohibiting concealed carrying of handguns without a permit are relatively recent. While some antebellum statutes did address concealed carrying, they did so by outlawing the practice entirely, rather than by setting up a system under which concealed carrying would be lawful only with a permit. These statutes usually had no exemptions for sheriffs or other peace officers, even when on duty.<sup>2</sup> During the 1920s and 1930s, many states adopted "A Uniform Act to Regulate the Sale and Possession of Firearms." This model law, adopted by the National Conference of Commissioners on Uniform State Laws and supported by the National Rifle Association, prohibited unlicensed concealed carry.<sup>3</sup>

Recognizing that at least some civilians would have a legitimate need for concealed carry of a handgun, most states adopted provisions allowing a sheriff, police chief, or judge to issue concealed handgun permits. Significantly, such statutes were broadly discretionary; while the law might specify certain minimum standards for obtaining a permit, the decision whether a permit should be issued was not regulated by express statutory standards.<sup>4</sup>

Concealed handgun permit statutes were passed in some parts of the United States as a method of prohibiting blacks from carrying arms. In the words of a Florida Supreme Court justice, "The statute was never intended to be applied to the white population and in practice has never been so applied."<sup>5</sup>

While the motivations behind California's concealed handgun statute are not as clearly understood, the effect has been similar to frankly racist statutes. California's legislative research body studied the issue in 1986

2. See *State v. Reid*, 1 Ala. 612 (1840). See generally CLAYTON E. CRAMER, FOR THE DEFENSE OF THEMSELVES AND THE STATE: THE ORIGINAL INTENT & JUDICIAL INTERPRETATION OF THE RIGHT TO KEEP AND BEAR ARMS 76-78 (1994).

3. See, e.g., CALIFORNIA ASSEMBLY OFFICE OF RESEARCH, SMOKING GUN: THE CASE FOR CONCEALED WEAPON PERMIT REFORM 6 (1986) (hereinafter *SMOKING GUN*).

4. See *infra* Part II. See also, *SMOKING GUN*, *supra* note 3, at 6-8. For details of the late arrival of concealed handgun statutes in the North and West, see CRAMER, *supra* note 2, at 172-78, 263-64; Don B. Kates, Jr., *Toward a History of Handgun Prohibition, In RESTRICTING HANDGUNS: THE LIBERAL SKEPTICS SPEAR OUT* 7-30 (Don B. Kates, Jr. ed. 1979).

5. *Watson v. Stone*, 4 So. 2d 700, 703 (Fla. 1941) (Buford, J., concurring specially). Commenting on the historically racist origins of the statute, Justice Buford stated:

[The] Act was passed for the purpose of disarming the negro laborers and to thereby reduce the [number of] unlawful homicides . . . and to give the white citizens in sparsely settled areas a better feeling of security. . . . [T]here has never been, within my knowledge, any effort to enforce the provisions of this statute as to white people, because it has been generally conceded to be in contravention of the Constitution and non-enforceable if contested.

*Id.*

make.<sup>6</sup> Because so many victims of violent crime are female or non-white, discriminatory granting of carry permits is especially hard to justify.<sup>7</sup>

Not every state adopted the Uniform Act. Some states had already enacted their own statutes.<sup>8</sup> Vermont adopted no statute prohibiting concealed carry of handguns, at least partly because of the Vermont Supreme Court's expensive reading of the Vermont Constitution's protections in *State v. Rosenthal*.<sup>9</sup> Even today, Vermont has no laws prohibiting or regulating concealed carry except "with the intent or avowed purpose of injuring a fellow man . . ."<sup>10</sup>

#### A. Modern Discretionary Permits

In many jurisdictions which continue to retain unlimited administrative discretion, abuse of discretion is common. Conversely, persons granted permits are often politically influential, rather than the people really in need of carrying firearms.<sup>11</sup>

Denver Police Chief Ari Zavaras slashed the number of carry permits, granting only forty-five permits in a city of one-half million people.<sup>12</sup> Detective William Phillips, the administrator of Zavaras' permit program, explained that only applicants with a "true and compelling need" could be granted permits. "Just because you fear for your life is not a compelling reason to have a permit," he elaborated.<sup>13</sup> After Chief Zavaras retired, he admitted that he carries a handgun almost constantly. "Now, when wandering around Denver, I very rarely go without one."<sup>14</sup>

Denver talk-show host Alan Berg was Jewish, passionate, highly provocative, and fond of insulting people with whom he disagreed. When Berg began receiving death threats from white supremacists, he went to a local police department to apply for a handgun carry permit. The police

6. *SMOKING GUN*, *supra* note 3, at 2.

7. According to the FBI, 49.6% of murder victims in 1991 were black. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1991 16 (b). 2.4 (1992).

8. At least one state, California, replaced an existing statute with the Uniform Act. See STATUTES OF CALIFORNIA AND AMENDMENTS TO THE CODES PASSED AT THE FORTY-SECOND SESSION OF THE LEGISLATURE 221 (1917) (comparing the 1917 California concealed handgun statute and the Uniform Act adopted by California in 1923).

9. 55 A. 610, 611 (Vt. 1903).

10. VT. STAT. ANN. tit. 13, § 4003 (1974). The statute also prohibits the non-authorized carrying of a "dangerous or deadly weapon" within the confines and grounds of state institutions. *Id.*

11. See *Infra* Part II.

12. Steve Gorness, *Cops Get Tougher on Gun Permits*, DENVER POST, Apr. 24, 1988, at A1.

13. *Id.*

14. *Id.*

chief attempted to dissuade Berg and finally rejected his application. Shortly thereafter, Berg was assassinated by members of the Aryan Nation.<sup>15</sup> No one will ever know whether, had Berg been armed, he might have frightened off his murderers. What is known is that Berg was unarmed and was speedily killed.

From 1984 to 1992, in the City of Los Angeles police administration refused to issue any permits. In a city of over three million people, not one person was found needful of a handgun permit. The Los Angeles policy changed, however, on June 28, 1992. The new police chief, Willie Williams, twice failed practice versions of the POST (Police Officer, Standards and Training) test. As a result, although he could retain the appointive position of police chief, Mr. Williams could not legally qualify to be a police officer in Los Angeles. Nonetheless, Mr. Williams was issued a concealed carry permit, the first civilian since 1984 to be so honored. The City of Los Angeles was subsequently sued for its discriminatory handling of permits; the City settled before trial, promising to issue licenses on the basis of need.<sup>16</sup>

Despite the City's agreement to the settlement, only five permits were issued in the ensuing nine months. Three permits went to government employees, and two went to private attorneys. On the basis of the absence of a "compelling" need, a permit was denied to a jeweler who 1) routinely carried large amounts of jewelry and valuables, 2) had been burgled, 3) had received police-documented death threats from a criminal he had helped to apprehend, and 4) had passed a defensive handgun class.<sup>17</sup>

Licensing in the rest of California is similarly haphazard and local officials enforce their own criteria in determining who is qualified to exercise the privilege of self-defense with a firearm.<sup>18</sup> For example, in addition to other requirements, the police department of Escalon, California requires applicants to pass a written exam with questions such as the following:

The shock of firing may on occasion place an unusual stress on the gun resulting in damage or a need for adjustments. Which of the following parts are likely to require attention after firing:

15. STEPHEN SINGULAR, TALKED TO DEATH 142 (1987). The police department in question was in Englewood, a suburb of Denver.

16. Patrick McGreevy, *Permit Rules on Concealed Guns Eased*, DAILY NEWS (Los Angeles), June 30, 1993, at 1.

17. John Hurst, *LAPD's Tight Control on Gun Permits May Prompt New LawsUIT*, L.A. TIMES, June 25, 1994, at A30, A31.

18. In Los Angeles County, a female private detective was disqualified from obtaining a permit because of her gender. Paul H. Blackman, *Carrying Handguns for Personal Protection: Issues of Research and Public Policy* 9 (paper presented at annual meeting of the American Society of Criminology, San Diego, Nov. 13-16, 1985).

- the screws of the face plate
- the ejector rod of revolver
- the firing pin
- all of the above.<sup>19</sup>

Such questions are equivalent to conditioning the issuance of a driver's license on passing a test for becoming an auto mechanic.

In New York City, carry permits are arguably awarded on the basis of political and social influence. Permits have been awarded to the following individuals:

- Laurence Rockefeller (a gun control advocate whose justification for the permit was "carry large sums of money")
- Gun prohibition advocate and *New York Times* publisher Arthur Ochs "Punch" Sulzberger (justification: "carry large sums of money, securities, etc.")
- Brady Bill advocate William F. Buckley (whose firm application cited his need for "protection of personal property while traveling in and about the city")
- The husband of Dr. Joyce Brothers (Dr. Brothers has written that gun ownership is a sign of sexual dysfunction in males.)<sup>20</sup>
- Celebrities including Bill Cosby, Howard Stern, and publisher Michael Korda.<sup>21</sup>

Other licensees include an aide to a city councilman widely regarded as corrupt, several major slumlords, a Teamsters Union boss who was a defendant in a major racketeering suit, and a restaurateur identified with organized crime and alleged to control important segments of the hauling industry.<sup>22</sup>

Conversely, permits are generally not awarded to persons in genuine need of carrying firearms. For example, crime victims are denied permits even though they are cooperating with the police, will testify against a criminal, and are receiving death threats from the criminal. Such persons will not even have their permit applications for home handgun possession processed within the required six months. And while being a publisher of a respectable publication such as the *New York Times* or *National Review*

19. NRA Institute for Legislative Action, Report, Mar. 23, 1994 (Sacramento, Cal.) (on file with authors).

20. *Permit 29,000 to Pack Guns*, DAILY NEWS (New York), June 22, 1981, at 1; Carol R. Silver & Don B. Kates, Jr., *Self-Defense, Handgun Ownership, and the Independence of Women in a Violent, Sexist Society*, in RESTRICTING HANDGUNS, supra note 4, at 153. See also Susan Hall, *Nice People Who Carry Guns*, NEW YORK, Dec. 12, 1977, at 38.

21. Susan Lehman, *If Punch Sulzberger's Packing Heat, Screw Magul Fumes, Why Not Me?* N.Y. OBSERVER, Dec. 21, 1992, at 1; Colum Lynch, *Elite in NYC are Packing Heat*, BOSTON GLOBE, Jan. 8, 1993, at 21.

22. William Bastone, *Born to Gun: 65 Big Shots With Licenses to Carry*, VILLAGE VOICE, Sept. 29, 1987, at 11, 12.

is apparently sufficient in itself for a carry permit, being the recipient of death threats such as "kill the white creep," "you will be shot," and "This is no joke. We are going to kill Al Goldstein," is not a sufficient basis. Mr. Goldstein, while the recipient of death threats considered serious by the police, is also the publisher of the highly unrespectable *Screw* magazine.<sup>23</sup>

Class discrimination pervades the permit application and approval process. New York City taxi drivers, although greatly at risk of robbery, are denied gun permits because they carry less than \$2000 in cash. Many taxi drivers carry weapons anyway. As the courts have ruled, ordinary citizens and storeowners in the city may not receive carry permits because they have no greater need for protection than anyone else in the city.<sup>24</sup>

Not surprisingly, given the problems inherent with a discretionary permit system, many people have begun calling for—and many legislatures have enacted—laws to regularize the carry permit application process.<sup>25</sup>

#### B. The New Breed Of Concealed Handgun Permit Laws

Since 1987, states have increasingly adopted a new breed of concealed handgun permit laws that make easier the process for many adults to get a permit to carry a concealed handgun. While most residents of these states

23. Lehman, supra note 21, at 1.

24. *Slattery v. Murphy*, N.Y.L.J., Oct. 14, 1971, at 2.

Class discrimination is not limited to New York City. A federal district court in California recently upheld Los Angeles County's policy of issuing handgun carry permits almost entirely to retired police officers and to celebrities. The court found the county's policy rational "because famous persons and public figures are often subjected to threats of bodily harm." *Hickman v. County of Los Angeles*, No. CV 91-5594-RMT(Br.) (C.D. Cal. Apr. 21, 1994) (Takesugi, J.). The court's point is obviously correct; but the fact that famous persons who are subjected to threats of bodily harm are legitimately issued permits does not prove that nonfamous persons who are also subjected to equally serious threats of bodily harm can rationally be denied permits. Similarly, the court upheld the policy of issuing permits to ex-police officers because they are "particularly well-trained in the use of weapons." *Id.* The fact that ex-police may be particularly well-trained does not provide a justification for denying a permit to an applicant who can prove that he or she is as well-trained (or even better-trained) than a former police officer. The case against Los Angeles County is distinct from the case against the City of Los Angeles, discussed supra (see accompanying notes 16-17).

25. Courts have sometimes stepped in to deal with egregious licensing abuses. For example, the Supreme Judicial Court of Maine held that the word "may" in a licensing statute means that a police department "must" issue permits to qualified applicants. *Schwanda v. Bonney*, 418 A 2d 163, 167 (Me. 1980). As the discussion on the pages above illustrates, however, the judiciary has been unable or unwilling to stop the rampant abuse of discretion in many jurisdictions; legislative reform remains the surest, most effective remedy for licensing abuse.

are unlikely ever to apply for a concealed weapon permit, the process is a matter of choice.<sup>26</sup>

These more permissive, nondiscretionary laws invite certain questions. How many permits have been issued? What happened to the murder rate when these laws took effect? How many serious problems developed because of the laws? The state-by-state analysis below in subpart I. C. will examine (1) the peculiarities of each state's non-discretionary concealed handgun permit law and (2) what happened to murder rates before and after these laws took effect.

### C. Methodology for Judging Effects of the Laws

Proponents of carry reform have hoped that such laws would reduce crime of all types, including homicide. Reform advocates suggest that crime will fall not only because lawfully armed citizens will use guns to thwart criminal attack, but also because the general deterrent effect of citizens carrying guns will cause some criminals to desist from confrontational crime.

The expectation of carry advocates is consistent with research performed for the National Institute of Justice. When professors James D. Wright and Peter H. Rossi interviewed and polled felony prisoners in ten state correctional systems, fifty-six percent of the prisoners said that a criminal would not attack a potential victim who was known to be armed. Thirty-nine percent of the felons had personally decided not to commit a crime because they thought the victim might have a gun; and eight percent said that this experience had occurred "many times." Criminals in states with higher civilian gun ownership rates worried the most about armed victims.<sup>27</sup>

Nonetheless, opponents of carry reform have argued that reform will lead to tragic increases in homicide. While there is a need for further research to examine what, if any, effect the carry reform laws have had on crimes such as rape and robbery, the examination of murder rates is a reasonable starting point for carry reform analysis. In particular, studying the murder rates allows an evaluation of the "worst case" scenario offered by carry opponents: that carry reform will lead to increased homicide.

Simply to compare the murder rates of each reform state after the new laws took effect to that of the national average is not an appropriate comparison. Many of the states that adopted non-discretionary permit laws have always been low murder rate states. Therefore, any comparison that fails to see how much murder rates *changed* because of these laws will give an artificially rosy analysis of the effects of carry reform.

<sup>26</sup> See *infra* Part II.

<sup>27</sup> JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS 149-51 (1986).

An examination of simply whether the murder rates declined after the new laws took effect would also be inappropriate because many of the new laws took effect between 1986 and 1990, when the murder rates for the entire country were on the rise. Thus, to necessarily attach significance to a rising murder rate in a reform state when most other states were also experiencing a rise would be misleading.

A more meaningful measurement is *murder rate percentage*: What is the relationship between the murder rate for a particular state and the murder rate for the rest of the United States? As an example, if Florida's murder rate for 1975 was 13.5 per 100,000 people per year, and the murder rate for the rest of the United States was 9.3 per 100,000 people per year, then Florida's murder rate percentage for 1975 was 145%. In other words, for every 100 murders per 100,000 people in the rest of the United States, there were 145 murders per 100,000 people in Florida. Because the murder rates for many states rise and fall roughly in parallel with the rest of the United States, the *murder rate percentage* can be a meaningful measure of how a particular state's policies influence the murder rate.

Recognizing that some readers will regard with suspicion such a synthetic measure (Disraeli's epigram—"lies, damn lies, and statistics"—comes to mind), we supply graphs for the murder rate of each state and the rest of the United States for the years examined.

This study also examines the years in which these laws were passed. The logic behind such an examination is two-fold. First, in some cases the law took effect part-way through the year, as it did in Florida. Second, the deterrent effect of such laws may be related to public discussion of these new laws. Thus, some benefit may be witnessed even before a particular reform law takes effect, as it increases the criminal's fear that the next victim may be armed.

## II. STATE-BY-STATE ANALYSIS

### A. Washington

The state of Washington adopted the Uniform Pistol & Revolver Act in 1935. In 1961, the state departed from the discretionary permit system, and required that if the applicant for a concealed weapon permit was allowed to possess a handgun under Washington law, the permit had to be issued.<sup>28</sup> At first glance, Washington's new policy appears quite remarkable. However, a little reflection on the nature of concealed weapons suggests the state's decision reflected a realistic understanding of handgun ownership.

The only circumstances under which a concealed handgun is likely to come to the attention of the police are that either the weapon was drawn, or that the person carrying it was searched by the police for some other,

<sup>28</sup> WASH. REV. CODE ANN. § 9.41.070(1) (West 1988 & Supp. 1994)

presumably criminal reason. If a person is allowed to possess a concealable firearm within the home, practically speaking, that person cannot be prevented from carrying the weapon concealed outside the home. As a New York court upholding New York State's handgun licensing law (the Sullivan Act) observed, "If he has it in his possession, he can readily stick it in his pocket when he goes abroad."<sup>29</sup> If large numbers of handgun owners choose to ignore a concealed weapon law, the state has only three ways of responding: repeal the law, restrict handgun ownership at home, or make concealed weapon permits available to nearly anyone who is allowed to own a handgun. Washington State decided to make permits easy to get, thus keeping handgun ownership safe and legal.

Washington's statute is astonishingly forceful:

The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his or her person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling.<sup>30</sup>

The statute goes on to list conditions that would cause "[s]uch applicant's constitutional right to bear arms" to be denied. Among others, these conditions include the applicant's being (1) under twenty-one years old, (2) subject to a court order or injunction regarding firearms, (3) out on bail pending trial or appeal, (4) awaiting sentencing for a crime of violence, or (5) subject to an outstanding arrest warrant for a misdemeanor or felony.<sup>31</sup>

The same statute also includes provisions for filing a civil suit against any agency that wrongfully refuses to issue a license or modifies the requirements of the law.<sup>32</sup> Notably, the statute allows non-residents to obtain such permits, although the state has up to sixty days to perform a background check on non-residents and on residents who have moved into Washington within the previous ninety days.<sup>33</sup>

In 1983, Washington made two important changes. First, the licenses would be valid for a four-year term, increased from two years. Second, license applicants who were improperly denied and who successfully sued an issuing agency for wrongful denial would be automatically awarded attorneys fees.<sup>34</sup>

29. *People ex rel. Darling v. Warden of City Prison*, 139 N.Y.S. 277, 285 (N.Y. App. Div. 1913).

30. WASH. REV. CODE ANN. § 9A1.070 (West 1988 & Supp. 1994)

31. *Id.*

32. *Id.* § 9A1.070(11)

33. *Id.* § 9A1.070(1)

34. *Id.* § 9A1.070(11)

As of 1993 there were 241,606 licenses outstanding in Washington.<sup>35</sup> Given Washington's population of approximately five million, about four percent of the state population have carry permits.<sup>36</sup>

The effects of the law in Washington State were subtle. As graphs (1) and (2) below show, after the passage of the nondiscretionary issuance law, murder rates rose and fell largely in line with the national rate. In the two years before the new law took effect, Washington's murder rate was somewhat less than half of the rate for the rest of the United States.<sup>37</sup> From 1961 through 1982, the Washington murder percentage rates stayed between forty-four and sixty percent of the rate for the United States. While U.S. murder rates dropped in the early 1980s, the Washington murder rate percentage continued to rise, reaching a peak of sixty-eight percent of the U.S. rate in 1988, before dropping back to more normal levels in 1980-82. The increased rates were most likely not the result of all those Washingtonians carrying concealed handguns. In fact, the murder rate percentage was rising before the new law took effect. In addition, at least part of the increase can be attributed to the actions of one individual, the Green River Killer, who murdered at least forty-eight Washington women during the years 1982-84.<sup>38</sup> Another infamous killer, Ted Bundy, murdered at least ten women in Washington State in 1974 before moving on to other states.<sup>39</sup> These aberrations must not be allowed to explain too much. The Green River Killer's activities stopped in 1984 for no known reason. Meanwhile, the murder rate percentages in Washington remained unusually high until 1989, when they suddenly plunged to levels typical of the period before 1982.

35. Bill MacKenzie, *Packin' the Heat*, OREGONIAN (Portland), Nov. 4, 1993, at A1.

36. Washington, like Florida and some other states, issues concealed carry permits to non-residents, who can use the permit when traveling in Washington. Presumably, the number of nonresident permit holders is not so large as to significantly change the estimated percentage of the Washington population having a carry permit.

37. Unfortunately, the Uniform Crime Reports program only began to produce reasonably complete statewide murder statistics in 1959.

38. Andrea Sachs & Joni H. Blackman, *Snuffing the Green River Killer*, TIME, July 31, 1989, at 57. Many of the Green River Killer's victims may not have been identified as his victims.

39. See generally STEPHEN G. MICHAUD & HUGH AYNESWORTH, *THE ONLY LIVING WITNESS* (1983). While Ted Bundy's bloody path of murders perpetrated with clubs and bare hands also led through Utah and Florida, the effects on murder rates in those states were less dramatic. In Utah, he did not kill as many people; in Florida, the murders were diluted in Florida's much larger population. *Id.*

Although Bundy did not use firearms in his crimes and his victims were apparently unarmed, citizen gun ownership did come into play at least once in Bundy's career. In June 1977, the Aspen, Colorado sheriff called out the *posse comitatus* (ordinary citizens with their own guns) to hunt for Bundy after he escaped from jail. *Id.*