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DATE: April 12, 2016  
TO: The Honorable Gabrielle LeDoux, Chair, and  
Members of the House Judiciary Committee  
FROM: Mike Hostina, General Counsel, University of Alaska   
RE: Analysis of CS SB 174 (FIN) passed by the Alaska Senate

The University of Alaska Board of Regents has sought six amendments to SB 174. This bill presently includes only two.

### **The Amendments Sought are Based on Existing, Constitutional, Law**

The six university-requested amendments are derived from existing legislative policy or criminal laws. University premises consist of many areas and situations that are similar, but not identical to, policies and laws prohibiting or criminalizing firearm possession in the following areas:

- The State Capitol;
- Concealed carry for people under 21;
- Concealed carry in residences, without the express permission of an adult resident;
- Loaded firearms in places where intoxicating liquor is served;
- Possession in child care facilities;
- Possession in court system facilities;
- Possession in domestic violence/sexual assault shelters;
- Possession in schools from pre-school through secondary school.

SB 174 has not been accompanied by any effort to repeal these policies or statutes or have them declared unconstitutional.<sup>1</sup> The University believes it is appropriate and constitutionally permissible for the university to regulate in these areas for the same legal and safety reasons that the Legislature has prohibited weapons in the capitol, and has criminalized possession of firearms in the above circumstances.

The university-requested amendments to SB 174 would not criminalize conduct. Instead, they are narrowly tailored to allow regulation to achieve the same public safety goals as existing law. Significantly, they would **not** exclude weapons from campus, but would permit the Board of Regents to manage specific, high conflict/high risk situations common on our campuses.

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<sup>1</sup> Although the university has offered in the past to facilitate a court challenge to its policy, that offer has never been taken up.

**In its current form SB 174 is Problematic For Several Reasons:**

- It allows concealed handguns in dorms and shared housing, **and would not adequately address secure storage of handguns, rifles or knives in dorms and shared housing;**<sup>2</sup>
- It allows concealed carry of rifles as well as open carry of knives;<sup>3</sup>
- It allows combative or suicidal students or employees to maintain possession of weapons on University property;
- It allows firearms or knives during adjudications and investigations unless the University establishes “secure points” as part of “restricted access areas;”
- It allows concealed carry in areas in which dedicated K-12 programs are provided; and
- It does not require a permit to carry concealed handguns on campus.<sup>4</sup>

**Six Amendments Are Required To Manage Specific High Conflict Situations Common On University Campuses:**

- 1. An amendment allowing the University to regulate possession of firearms by a student or employee demonstrating a risk of harm to self or others.**

Alaska often leads the nation in suicide rates, and suicide is a leading cause of death in college-age populations. UA campuses deal with numerous suicidal students every year, with few fatalities (see chart below). However, suicide attempts by firearm are much more successful than other means.

<b>Year</b>	<b>UAA</b>	<b>UAF</b>	<b>UAS</b>
FY14	5 Attempts 8 Ideations	2 Suicides	2 Attempts 7 Ideations
FY 15	8 Attempts 19 Ideations	3 Attempts 2 Suicides on & 2 off-campus	3 Attempts 11 Ideations
<b>FY 16 YTD</b>	5 Attempts 12 Ideations	1 Attempt 1 Suicide	3 Attempts 9 Ideations

The University proposed this amendment based on concerns parallel but not limited to those addressed in Title 47. The amendment is required for a number of reasons: it would allow response to threats of harm that may not be related to mental illness, or to mental illness that may fall short of the standard required for involuntary commitment to a hospital for psychiatric evaluation and treatment, i.e., “gravely disabled or likelihood of serious harm.” It is also required because involuntary commitments are rare and are not an appropriate tool to address the

<sup>2</sup> Although the proposed AS 14.40.173(b)(2) appears to permit regulation, this part is limited by section (d), which limits regulation to requiring nonresidents who carry concealed to carry their handgun at all times, and to requiring residents who carry concealed to store a handgun in a resident-provided lockbox, that may not be left unattended for more than a day.

<sup>3</sup> Proposed AS 14.40.173(a) would preclude the Board of Regents from regulating firearms and knives “except as specifically provided by statute.” The CS removes language allowing regulation of possession or storage and only permits regulation of “*carrying of openly carried firearms*” (section (c)(1)). As a result, the Board of Regents could not regulate concealed carry, possession or storage of rifles, or open carry, possession or storage of knives.

<sup>4</sup> Of the eight states that require their public universities to allow concealed carry, six require a permit, with two of those requiring an enhanced permit. Four of those states allow regulation in dorms and other locations.

wide range of mental health issues seen on our campuses. (By contrast, voluntary commitments are very brief and may be terminated by the patient at any time without impact on the legal right to possess firearms.) The requested amendment would allow the university to use a less restrictive alternative to involuntary commitment, and to instead encourage voluntary mental health treatment with a far less damaging and significant deprivation of freedom than an enforced stay at a mental hospital.

The Report to the NRA by the National School Shield Task Force recommends that schools react promptly to behavior that indicates a risk. With the amendment, the University could intervene when student or employee behavior indicates a risk of harm to self or others, and before it escalates, to restrict weapons and take other appropriate action. For example, if a student engages in an altercation, expresses thoughts of suicide, or an employee expresses thoughts of workplace violence, the university would intervene to offer counseling or other assistance, as well as taking disciplinary or other appropriate action. As part of that intervention, the university would restrict that individual's right to carry a concealed handgun or knife on campus. Absent the amendment, the university would have fewer, less available, but more restrictive, alternatives for dealing with risk of harm to self or others, such as excluding students or staff from campus or seeking involuntary commitments. These alternatives affect other rights and can also be legally problematic.

The university would be required to review any deprivation and allow a person who is prevented from carrying a concealed handgun or knife because of a threat of harm determination to regain the ability to carry. Existing staff and student disciplinary processes and student care team processes that include referral to counselors or other professionals as appropriate, both impose and provide for review of restrictions. A staff member or student who contests a restriction may appeal internally and to the courts. The proposed amendment language itself would provide the standard, i.e. the university would have the burden to show that the behavior of students or employees demonstrates they pose a risk of harm to themselves or others.

- 2. An amendment allowing the University to regulate concealed carry of handguns and knives in university facilities housing health or counseling services or other services related to sexual harassment or violence;**
- and**
- 3. An amendment allowing the University to regulate concealed carry of handguns and knives within parts of facilities used for adjudication of student and employee disciplinary issues or disputes, only when those adjudications are occurring.**

Presently UA may restrict weapons in these areas by policy and take action when weapons are detected. Under the Senate Finance CS, however, UA would be prohibited from doing so unless UA creates "restricted access areas" as defined in the bill ("area beyond a secure point where visitors are screened and does not include common areas of ingress and egress open to the public"). Because restricted access areas must meet the definition in the statute to be enforceable, and because that definition includes creation of a "secure point," there will be a cost associated with barring firearms from these areas. The university's fiscal note reflects the fact that signage alone would not be sufficient, and that UA would need to determine: 1) the most effective and efficient way to configure restricted access areas as defined in the bill; 2) the

appropriate type of screening at secure points; and, 3) the improvements needed to existing and newly established secure access points to ensure compliance with the bill.

**4. An amendment allowing the University to regulate concealed carry of handguns and knives in student dormitories and other shared living quarters.**

There are unique issues associated with carrying concealed handguns and knives in dorms and shared housing that are not present in private housing. These differences include congregate living rules enforced by student Resident Advisors, close quarters, shared facilities such as bathrooms and lounges, the presence of many young people with greater access to dorm rooms, transient visitors and the frequent presence of alcohol. In addition, Alaska law prohibits a person from carrying concealed into a person's house without the adult homeowner's permission. The university serves as the "adult" in shared housing, and there may be residents who object to other residents carrying concealed handguns or knives.

The university has many non-traditional students and some 40 percent of dormitory residents are over 21. There are also visitors to the dorms who are over 21. Thus allowing concealed carry in dorms and other shared housing will result in concealed handguns and knives being accessible in a mixed and volatile environment that is unlike any private residence.

Lock boxes alone do not address the issue of concealed handguns and knives in shared living space for the reasons stated above. Requiring students to supply their own lock box is not a solution. Installation would be required to prevent theft. Installation and removal by students may damage university property or be ineffective. The CS does not specify that a lockbox meet any standard and some common lockboxes are easily defeated. Non-standard lockboxes for which the university has no key would also pose issues when students are legitimately prohibited from possessing firearms, are barred from or leave campus. The university's research, as indicated in its first draft of the fiscal note, shows university installation of quality handgun lock boxes is prohibitively expensive.<sup>5</sup>

Given the greater risks and university responsibility for shared housing, as well as the rights of students to control their own living space, the university believes that excluding weapons from dorms/shared living spaces, while permitting them in non-shared living spaces is the only effective way to address these critical concerns.

**5. An amendment allowing the University to regulate concealed carry of handguns and knives within parts of facilities used for dedicated programs for preschool, elementary, junior high and secondary students, only when those programs are occurring.**

Possession of firearms on K-12 property is criminalized. Yet SB 174 does not permit regulation of weapons within university programs dedicated to K-12 students. The largest of these include ANSEP, Mat-Su Middle College, Della Keats Health Science Program, Upward Bound, the Rural Alaska Honors Institute, and Sealaska and Goldbelt Heritage Summer Camps. The university has sought a very narrow amendment that would only apply to portions of a facility

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<sup>5</sup> The Senate Finance CS appears to inadvertently allow storage of rifles in dorms, but makes no provision for long gun storage. The university currently provides centralized storage for firearms for dorm residents.

used for these programs, and only while the program is occurring. These are all programs in which the university assumes the role of a parent or guardian (*in loco parentis*). These situations bear no similarity to public places where children just happen to be present.<sup>6</sup>

The amendment would provide a tool to manage possession of concealed weapons in conflict situations, create consistent expectations for students and parents in the K-12 system, avoid potential accidents, and allow UA to apply the standard of care established in law for K-12.

**6. An amendment requiring a person to obtain a concealed handgun permit before carrying a concealed handgun on University property.**

Of the eight states that require their public universities to allow concealed carry, six require a permit, with two of those requiring an enhanced permit.

In 2014, the University opposed a bill requiring a concealed carry permit to carry handguns on UA premises and requiring use of lock boxes in dorms. That was the case because that bill otherwise would have prohibited any other university regulation of concealed carry. The university would not have been able to restrict possession of concealed weapons by permit holders in any of the following specific high conflict/high risk situations:

- When student or employee behavior indicates a risk of harm to themselves or others;
- In student dormitories or other shared student living quarters;
- In dedicated K-12 programs run by UA;
- In Health & Counseling, Discrimination, Harassment and Title IX offices;
- During adjudication of staff or student disputes or disciplinary issues.

In the context of SB 174, the university is proposing a permit requirement in addition to the specific ability to manage these issues. A student or employee carrying concealed in the close quarters of university common areas, classrooms, labs, libraries, and other communal space should have some training and knowledge about gun safety and applicable law. A permit also would exclude individuals with certain criminal convictions, including a Class A misdemeanor for domestic violence or stalking, from carrying concealed on campus.

**SUMMARY** As passed by the Senate and House Education, SB 174 would prevent the university from responding to common, known, high risk and high conflict situations involving concealed firearms and knives on university property. The Board of Regents and University of Alaska administration respectfully request that the House Education Committee:

- 1) Adopt the Senate Education Committee substitute for SB 174 in place of the version referred by the full Senate; and
- 2) Make the additional amendments allowing the university to regulate concealed carry in portions of facilities used for primary and secondary programs while they are occurring, and require a concealed handgun permit to carry concealed handguns on campus.

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<sup>6</sup> In dismissing the amendment for university-run programs for K-12 students, bill proponents have likened such programs to children being present at Fred Myers. Fred Myers bears no resemblance to a school, and parents, not a public entity, are responsible in such circumstances.