

University of Alaska Fairbanks

Staff Council

Resolution 2016-E-1

Approved

March 11, 2016

The University of Alaska Fairbanks Staff Council hereby resolves and directs that this resolution be effective March 11, 2016.

Resolution 2016-E-1:

Whereas, the UAF Staff Council is the elected representative body of the staff of the University of Alaska Fairbanks;

Whereas, the University of Alaska presented its position on SB 174 via a position paper issued on February 10, 2016 (attached); and

Whereas, the University of Alaska affirmed the Constitutionality of its policies in a 2014 letter from UAF General Counsel to the House Education Committee (attached); and

Whereas, the University of Alaska outlined its clear concerns with regard to campus safety and concealed carry on campus in a letter to the Senate (attached); and

Whereas, the UAF Staff Council is of the opinion that current University of Alaska policies regarding campus are reasonable and prudent; and

Whereas, the UAF Staff Council members provided testimony in opposition during their legislative advocacy event; and

Whereas, SB 174 is an unconstitutional bill that would infringe on the rights of UAF staff;

Whereas, a March 2016 survey conducted by the UAF Staff Council shows that the majority of UAF staff oppose SB 174;

Therefore, be it resolved that the UAF Staff Council opposes SB 174, "An Act relating to the regulation of firearms and knives by the University of Alaska."

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Faye Gallant, President, UAF Staff Council

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Date

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<sup>1</sup> These rules do not establish criminal penalties, and primarily affect students and University employees.

In addition, these rules are required to permit the University to manage areas, situations and people *for which the University is responsible*. This distinction is critical because unlike the state or a municipality, the University must proactively manage and is responsible for how thousands of students and employees interact as they live, eat, work and play on its premises.

**Critical Changes Requested** – UA does not support this bill because it eliminates UA's ability to effectively manage student and employee conflicts and safety issues where concealed weapons are involved. However, amendment to permit regulation in the highly sensitive situations discussed below would address a number of concerns.

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<sup>1</sup> The University believes its current policy and regulations are constitutional and allow it to effectively deal with safety issues as they arise. Firearms are permitted: at approved and supervised activities, including rifle ranges, gun shows, etc.; in cars located on streets or in parking lots; by faculty or staff in residences and by dormitory students in approved storage, and while transporting firearms directly to residences or dormitory storage locations; and on undeveloped and uninhabited university land. As detailed in a March 31, 2014 memo to Senate Finance, the

The University must have rules to effectively manage the following critical situations. In addition, these situations are analogous to situations in which concealed carry is criminalized under current state law. However, because of technical distinctions, they fall short of coverage by criminal law, and could not be regulated by the University under the current bill. UA requests amendment to permit regulation in the following circumstances to address these critical safety issues:

**1) When the behavior of students or employees demonstrate they pose a risk of harm to themselves or others** - The Report to the NRA by the National School Shield Task

Force recommends that schools react promptly to

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that would prohibit possession of concealed weapons in shared student residences would be consistent with existing age limits on concealed carry, alcohol restrictions on possession of firearms, as well as with requirements for “adult resident” consent to concealed carry in a residence.

3) **I**

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However, this

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Supreme Court held that George Mason University was both a government entity and a school and thus a “sensitive place”<sup>9</sup> where under *Heller*, firearms restrictions are presumptively valid. The challenge to George Mason’s regulation was brought on both state and federal constitutional grounds. Though the appellant could have sought review of the federal constitutional issue by the US Supreme Court, no request for US Supreme Court review was filed.<sup>10</sup>

The same analysis holds true under the Alaska Constitution. In 1994 the voters of Alaska amended Alaska’s constitution to add the second sentence of Article I, Section 19, thus establishing an individual right to bear arms under Alaska’s Constitution. In *Wilson v. State*,<sup>11</sup> the Alaska Court of Appeals looked at whether the 1994 amendment to Article I, Section 19 invalidated Alaska law prohibiting felons from possessing firearms. Since voters had approved the amendment to the constitution, the Court of Appeals determined the breadth of the right by examining the “meaning placed on the amendment” by the voters. Because the voters had been assured that existing laws would not be affected by the amendment, the Court concluded that the voters had not intended to invalidate existing Alaska laws regulating firearms. Thus the voters who passed the amendment did not intend to create a constitutional right that extends, for example, to carrying firearms in schools, to concealed carry under 21, to courts or other government buildings, all of which were restricted in 1994.

**2. Because Regents’ Policy And University Regulation Only Apply To Developed University Premises Which Are defined By The Courts As “Sensitive Places,” No Constitutional Right Is Implicated A**



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presumptively lawful and outside the scope of the Second Amendment's protections.<sup>15</sup>  
As a result, no further constitutional analysis is appropriate, much less an analysis  
applying strict scrutiny.

**B. Concealed Carry By Permit Is Not Less restrictive Or More Effective Than  
Current University Policy**

For the reasons discussed below, the concealed carry permit system in the CS is not less  
restrictive than current policy in certain circumstances. The CS would potentially intrude  
on the rights of everyone who brings a firearm to campus while preventing the University  
from addressing the acknowledged compelling interests of safety and prudent risk  
management on UA campuses.

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UA's policies, like criminal laws, allow UA to take action when it becomes aware of a violation, in this case, the presence of any weapon on developed premises.<sup>17</sup> This is particularly important in problematic circumstances common on University campuses and described in more detail below. The CS, however, would prohibit any UA response even in circumstances when UA knows of a threatening situation and thus is likely to be held liable for failure to act.

**C. The CS Prevents the University From Meetingies,hnnng1 Tc 2(a)6( [(h)2Tw (j EMC /P <**  
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campuses in large numbers, sometimes in extended residential, enrichment and college prep programs, often daily after school.

- Concealed carry under 21 is a crime - but the CS would require permitting firearms in dorms where 60% of UA residential students are under 21, and where, unlike private housing, UA is the “adult” – UA retains authority and responsibility for dorms, and hires Resident Assistants to maintain safety, order and provide counseling;
- Possessing a loaded firearm in a place where intoxicating liquor is served is a crime - but the CS would require UA to permit firearms in dormitories where liquor is present;
- Possession of a firearm in a child care facility or adjacent parking lot is a crime - but the CS would require permitting firearms in nearby locations since both UAA and UAF have child care facilities integrated on campus;
- Possession of a firearm in a court facility is a crime, but the CS would require UA to permit firearms in potentially contentious adjudications of staff and student disciplinary and academic issues

That report recommends that schools react promptly to behavior that indicates a risk. Under present policy, UA can respond promptly to reports of any weapons possession on developed property and take appropriate action. Under the CS, that would no longer be the case. The CS would prevent restrictions on permit holders who have committed or who later commit certain crimes. The permit law allows one class A misdemeanor in the past 6 years. So UA could not restrict concealed carry if a permit holder: is convicted once, for example, of violating a protective order, stalking in the second degree, assault in the 4th degree, or is convicted of an Attempt or Solicitation of a Class C Felony.

The CS also would prohibit UA from restricting weapons of permit holders whose behavior indicates risk apart from convictions. For example, someone who is known to possess firearms on campus and who is involuntarily hospitalized for psychological evaluation (which often ends without a formal finding of mental illness or formal commitment for treatment), or who exhibits warning signs including depression, suicidal ideation or gestures, or overt hostility or aggression (everyday occurrences on residential college campuses) could not be deprived of his/her weapons.<sup>18</sup> That's because no state law prohibits possession of weapons by those with psychological disturbances; federal law prohibits possession by those "adjudicated as a mental defective" or "committed to a mental institution." These formal mental health adjudications are relatively rare. Foreseeability of harm creates an expectation and standard that UA will respond when troubling events occur.

The same NRA-sponsored report recommends 60-80 hours of training for selected school employees who are authorized to be armed. By contrast, a concealed carry permit requires only 12 hours of self-defense, legal and weapons handling training. Permittees self-select.

Thus under the CS or the original bill, UA's policy could not meet the NRA's recommended standard for possession of firearms on school grounds or for responding to indicators of threats.

#### **D. Summary And Conclusion**

UA's policies are presumptively constitutional because they apply to "senit.e.(")Tj -0:00d[ 0 -1.15 ces identified in federal and state law, i.e., schools and government buildings, and invol23 circumstances analogous to longstanding prohibitions. Even if that were not the case,

<sup>18</sup> Jared Lee Loughner was suspended from Pima County Community College for bizarre behavior three months before he killed six pe

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