UA administration position paper on SB 176/HB 335 March 4, 2014

Before & After

- Today the university manages its premises and responds appropriately and immediately to known, potentially unsafe situations involving weapons. UA will not be able to do so if these bills pass. If someone today openly carrying a weapon approaches a UA graduation ceremony or sporting event, enters UA housing, displays a weapon in a classroom or takes up a position with a weapon in a corridor, UA can contact them, ask them to put the weapon in secure storage or a locked car, or ask them to leave campus with the weapon if they decline. These are administrative procedures.
- The day after SB 176 becomes law, UA must wait for that person to commit a crime to take action--even if UA knows the student, staff or visitor is depressed; suicidal; angry about a grade, evaluation or disciplinary action; or in a serious dispute with another student, colleague or significant other in that location. There is a significant potential for tragedy and liability where UA knows about the circumstances.

The Board manages UA reasonably

- UA manages its premises reasonably. Restrictions on campus are administrative; they do not criminalize conduct and apply only on UA's developed premises.
- UA's policy does not ban all weapons from campus. Weapons are permitted:
    - At supervised activities, such as rifle range usage;
    - At events with permission, such as gun shows;
    - In cars on streets and parking lots;
    - By faculty or staff in residences. Dorm residents must use secure storage;
    - On undeveloped or uninhabited land;
- Weapons are not permitted in dorms, classrooms, labs or meeting space.

Why these Bills Don't work for UA

- Under SB 176, any person who is able to legally possess a firearm would be entitled to carry that firearm, **either openly or concealed**, almost anywhere on university property, including classrooms, labs, dormitories, offices, sports arenas and other events. This includes students as young as 16 (rifle) with parental permission.
- Thousands of people enter UA premises every day. While the Legislature and municipalities are not held liable for failing to regulate public streets, UA will be held responsible for safety on its premises.
- University premises also are home to programs for thousands of K-12 children every day. Under current state law, it is a crime to conceal or open carry in all K-12 public schools.
    - UA's collaborations with K-12 include formal programs such as the Middle College at Eagle River Campus, ANSEP, ASRA, RAHI, Upward Bound, etc.
    - There are also individual K-12 students who participate in academic classes and enrichment programs throughout the year, including Summer

Music Academy, GEOForce Alaska, Fairbanks Youth Orchestras, Culinary Boot Camp. 4-H alone involves some 10,000 K-12 children.

- The "safety valve" exceptions don't work:
  - These bills state they would permit restrictions and penalties **identical** to those in state law.
  - However, state law imposes criminal penalties. Unlike municipalities, UA has no authority to impose criminal penalties. UA would be unable to impose lesser administrative penalties because they are not "identical."
    - A student, employee or visitor could face jail for weapons misconduct on campus. But UA would not be able to restrict that same individual from campus; suspend or expel if a student; or terminate employment because those penalties are not "identical" to state law.
    - Attempts to remove an armed, dangerous person from campus would result in litigation over whether UA regulated the "weapon."
    - The bills state they would allow some restrictions on weapons in "restricted access areas" beyond "secure points." That might work for a municipality or on K-12 premises, where access can be limited. It's unworkable in UA's environment, where open access and mixed use is the rule, and where metal detectors or security guards at entryways are not feasible or affordable.
  - By contrast, all of K-12 property is highly protected. Criminal penalties apply on K-12 property for most weapons possession. However, these bills would prevent UA from applying less serious administrative restrictions even when K-12 student programs are on UA property. It doesn't make sense to protect K-12 students so highly in one setting, but then prevent all regulation on UA property.
- UA could no longer respond proactively, before a crime is committed, to possession of weapons by students and employees who are depressed or troubled or to other individuals who openly carry weapons for intimidation or other unknown reasons.
- Municipalities and the state are not held responsible for failing to regulate weapons on public streets or in private homes. However, the University will be held responsible for what happens on its developed property, dorms, classrooms, labs, meeting spaces, concert halls, sports arenas and workplaces, particularly when it has advance knowledge but fails to act.

Constitutionality

- Some will say that Board of Regents' Policies infringe the constitutional right to bear arms. However, as with all constitutional rights, and as the US Supreme Court and Alaska courts have confirmed, reasonable restrictions are permissible.
- The Alaska Legislature has demonstrated this by making possession of a firearm **a crime** for certain people, locations and circumstances, including:
  - 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;

    - In childcare facilities;
    - In court system facilities;
    - In domestic violence/sexual assault shelters;
    - In all K-12 schools, from pre-school through secondary school.
- University campuses have many parallels to the above list. They include:
    - Residences occupied by young adults where living space is limited and shared. Youthful residents may disregard security or may be unable to insist that firearms not be present or that they be handled safely.
    - Many of our students are under 21,[1] and face criminal sanctions if they carry concealed weapons.
    - Liquor may be served in pubs. Liquor is present in dormitories, legally and illegally.
    - Both UAA and UAF have childcare facilities integrated into campus.
    - K-12 students are on campus in large numbers, sometimes in extended residential, enrichment and college prep programs.
    - Disciplinary and academic issues are adjudicated on a daily basis.
    - Classrooms and workplaces range from benign to laboratories containing explosive and hazardous materials.
- There is significant overlap between the people, locations and circumstances prevailing on University campuses and those people, locations and circumstances in which state law criminalizes firearm possession. This indicates that the University has regulated weapons reasonably and creates an inference of constitutionality.
- Both the Alaska Legislature and the US Supreme Court have recognized limits on second amendment rights, as is the case with all constitutional rights. Those limits include "sensitive places such as schools and government buildings." University classrooms, labs, housing, meeting spaces, concert halls and sports arenas are and should be treated as "sensitive areas," where weapons are restricted.

Consistency with state law & preemption

- It is true that state law decriminalized concealed carry. UA likewise does not criminalize weapons possession or concealed carry. The fact that something isn't criminal, however, does not mean it cannot be regulated. For example, repeal of prohibition didn't preclude regulation of alcohol.
- Nor does state law preempt Board of Regents' policy. Current law preempts municipal restrictions on firearms, but UA is not a municipality.

SB 176 & the Board of Regents' Constitutional Authority to "Govern" UA

- Board of Regents' policy regulating weapons only affects UA premises. Article 7, Section 3 of the Alaska Constitution makes the board responsible for "governing" the university. By restricting the board's ability to regulate its premises regarding weapons, SB 176 raises a possible legal question of the Board of Regents' constitutional authority and responsibility to govern UA premises, which should be resolved.

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[1] In Fall 2014, 29 percent of students enrolled in for-credit courses were under 21 years of age; 7 percent were younger than 18. This does not reflect numerous minors who participate in UA non-credit outreach programs.

- The constitution limits "special" narrowly focused legislation. Thus the framers of Alaska's constitution arguably did not intend that the legislature dictate how the board governs internal UA operations. The legislature itself has recognized that in AS 14.40.170. That statute affirms the board's authority over UA property and its authority to adopt "reasonable rules … for the good government of the university."

Risk and Safety

- The environment after SB 176: Individuals of legal age (rifle users as young as 16; 21 and older for concealed carry) will be allowed to open and concealed carry at sporting events, graduations, in classrooms, dorms, labs, lecture halls, food service areas, theatres, offices and hallways of buildings at all 16 UA campuses.
- Allowing unfettered carry of weapons does not inherently reduce the risk of an event occurring using those weapons.
- Some argue that weapons on campus will prevent mass shootings, yet there are no robust, convincing and compelling data to support that assertion.
- These bills create an untenable situation where UA responders are generally unable to distinguish between the good guys and the bad guys, thus markedly increasing the probability of error in the split second decision to use deadly force.
- SB 176 would deny the Board of Regents any meaningful authority to regulate individuals on University premises with respect to weapons, even while the Board of Regents and UA are likely to be held legally responsible for issues involving weapons. As a result, the bill significantly impacts the university's ability to manage risk proactively and to respond to criminal misconduct.