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March 31, 2010

Co-Chairman Bill Stoltze
House Finance Committee
via fax: (907) 465-4928
re: HB316
Dear Co-Chairman Stoltze:

I am submitting these remarks as requested by representative Les Gara. Please distribute to all members of the House Finance Committee.

I have concerns about the portions of the bill that require the **preservation** of evidence. (My separate concerns about post-conviction **testing** of that preserved evidence were noted in my oral testimony earlier today).

1) No law enforcement agency is required to preserve physical (as opposed to biological) evidence if it is "impractical" or "hazardous" to do so. [page 3 of the CS, lines 14-17 [subsection (b)]
I fear this broad language creates a lesser standard of due process for those convicted of crimes in rural Alaska. Of course smaller communities have less complete and sophisticated evidence storage facilities than the more urban areas.
But an innocent person from a rural community should have no less of a chance to complete exonerating testing than a person convicted in Anchorage. We already know that rural Alaska has less law enforcement presence than urban Alaska. This legislature should not be complicit in deliberately providing fewer procedural safeguards for rural citizens. And who defines what is "impractical" or hazardous"? This overbroad exception to the preservation of physical evidence (all of subsection (b)) should be removed from the bill.

2) A law enforcement agency may destroy biological evidence before the deadlines set forth in the statute if it sends written notice to the convicted person, the attorney of record, the current attorney (if any) and the prosecuting attorney, and no one sends in a written request to preserve the evidence within 120 days. [page 4 of the CS, lines 1-18 [subsection (e)]
I fear this language will allow important biological evidence to be destroyed early in a variety of situations where this notice will be inadequate: where the convicted person is illiterate, or does not speak English as his/her first language, or is moved so frequently by DOC that the mail takes a long time to reach him/her. Trial attorneys come and go. One year after a case is closed, a convicted person has no appointed counsel. This notice is constitutionally inadequate to require a knowing, intelligent, voluntary waiver of the preservation of evidence. Subsection (e) should be removed from the bill.

3) The bill requires preservation of the biological evidence through all state proceedings including trial, appeal and post-conviction relief in state court. [page 2 of the CS lines 30-31 and page 3 of the CS lines 1-6.]

However, a person convicted of a state crime has up to a year after that to file a federal action for a writ habeus corpus, alleging a violation of federal constitutional law. The convicted person cannot file it any sooner because they have to exhaust their state remedies before the federal court will hear their claim. The claim has to have been raised in state court and fully litigated. It does not make sense to preserve the evidence throughout the state process, but then allow it to be destroyed before the federal review. I would suggest the addition of the following language (in bold) on page 3 line 4:

C) if a timely application for post-conviction relief is filed within the periods stated in (A) and (B) of this paragraph, **one year** after the date that a judgment dismissing or denying the application for post-conviction review becomes final;

(D) if a timely petition for writ of habeus corpus is filed in federal court, the date that a judgment or order dismissing or denying the petition for writ of habeus corpus becomes final.

Thank you very much for allowing me to offer suggestions to this important legislation.

Sincerely,

Barb Brink