

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

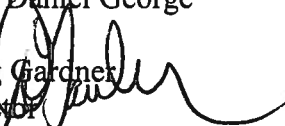
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 6, 2015

**SUBJECT:** Granting of a Travel Pass  
(Work Order No. 29-LS0404\H; CSHB 93(STA))

**TO:** Senator Bill Stoltze  
Chair of the Senate State Affairs Committee  
Attn: Daniel George

**FROM:** Doug Gardner  
Director 

Mr. George asked whether Section 1 of CSHB 93(STA) at page 2, lines 12 - 14 creates a situation where a probation officer may feel compelled to grant a person on probation a travel pass.

The brief answer is that while this section of the bill requires that a probation officer permit a probationer to travel in the state to make diligent efforts to secure employment only if the travel is not inconsistent with other terms of probation set by the court, **a probation officer likely maintains the discretion to decline travel in most circumstances, and can always seek the court's guidance to resolve close questions.**

### Discussion

Section 1 of CSHB 93(STA) provides:

\* **Section 1.** AS 33.05.040 is amended to read:

**Sec. 33.05.040. Duties of probation officers.** A probation officer *shall*

(1) furnish to each probationer under the supervision of the officer a written statement of the conditions of probation and shall instruct the probationer regarding the same;

(2) keep informed concerning the conduct and condition of each probationer under the supervision of the officer and shall report on the probationer to the court placing **that** [SUCH] person on probation;

(3) use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvements in their conduct and condition;

(4) keep records of the probation work, keep accurate and complete accounts of all money collected from persons under the supervision of the officer, give receipts for money collected and make at least monthly returns of it, make the reports to the court and the commissioner required by them, and perform other duties the court may direct;

(5) perform [SUCH] duties with respect to persons on parole as the commissioner shall request, and in that [SUCH] service shall be termed a parole officer;

**(6) accommodate the diligent efforts of each probationer to secure and maintain steady employment when prescribing the times at which a probationer shall report;**

**(7) permit each probationer to travel in the state to make diligent efforts to secure and maintain steady employment if the travel is not inconsistent with other terms and conditions of probation.** [Italics added for emphasis.]

Take for example, a person on probation for felony DUI, with conditions of probation that include seeking and maintaining employment, but also completing an alcohol treatment program, and not consuming alcohol. Let's assume that this person completes alcohol treatment, and has generally performed well on probation. Let's also add to the hypothetical that this person is a tradesperson, and that an opportunity to work on a remote construction project in a community where there is no full time law enforcement, etc., presents itself. If the probation officer declines to allow the person to travel for this employment opportunity, the statute seems to allow discretion to the probation officer to decline the travel, based on the officer's concern that, while the job opportunity is good, there is no way to monitor whether this offender is consuming alcohol, etc., and therefore the travel is inconsistent with the person's sobriety and community safety. The probation officer's decision would of course be a judgment call, that either the probationer or the probation officer could ask the sentencing court to review on an expedited basis, where the court would decide the issue.

I can think of many hypotheticals where travel requests could present close questions for a probation officer to decide based on the officer's experience, training, and the probationer's performance on probation in accordance with their terms and conditions of probation. However, **because the probation officer can always seek the court's assistance in reviewing a travel request, a probation officer is unlikely to feel compelled to allow travel to a probationer for employment where, in the probation officer's judgment, the travel is inconsistent with the probationer's terms and condition of employment.**