



Governor Michael J. Dunleavy
STATE OF ALASKA

January 22, 2019

The Honorable Cathy Giessel
Senate President
Alaska State Senate
State Capitol Room 111
Juneau, AK 99801

Dear Senate President Giessel:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to pretrial release, credit toward a person's sentence for time spent in a treatment program or electronic monitoring, and amending the Alaska Rules of Criminal Procedure.

This bill repeals pretrial service provisions of SB 91 and places the authority and discretion back in the hands of the Courts to determine bail and release conditions. Additionally, it authorizes the Commissioner of Corrections to monitor and enforce pretrial conditions as the Department does with probation and parole services, reenacting the third-party custodian system and electronic monitoring systems, which were in place prior to SB 91.

The bill prohibits an individual from obtaining jail credit for time spent on electronic monitoring before trial. Current law allows a person to earn day for day credit for time spent on electronic monitoring while out on bail release. Only the most serious offenses are limited to earning 360 days of credit, otherwise, there is no limit to the amount of time a person can have credited toward their sentence. This can result in ultimately spending little to no time in jail once a person is convicted and sentenced. Case law has held that time spent on electronic monitoring is not akin to time spent in jail. *Matthew v. State*, 152 P.3d 469 (Alaska App. 2007). The bill will amend the law to conform to this holding and prohibit the accrual of jail credit when a person is on electronic monitoring while on pretrial release.

The bill increases the efficiency of the criminal justice system by encouraging the court system to use videoconferencing for all pretrial hearings wherever that technology is feasible. Current practice is to require an in-custody defendant to be physically present at all pretrial hearings. Some of these hearings are simple scheduling hearings which only take a few minutes. However, it requires significant resources to transport a defendant from the jail to the courthouse. Each time a prisoner is transported, there is the potential for an escape or for contraband to be brought back into the prison facility. The increased use of videoconferencing will decrease these risks and improve the efficiency of the criminal justice system.

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Finally, the bill allows a defendant's counsel to agree to continuances of trial. This is helpful in the event that the defendant's counsel needs more time to adequately prepare for trial. If the defendant's counsel is unprepared it can result in the case being overturned on appeal or having the conviction vacated through an ineffective assistance of counsel claim. Both situations delay justice for victims and put the State in a position of having to retry the case because the defendant did not appreciate the importance of allowing for a continuance. The court would still need to make an independent evaluation of whether or not a continuance is appropriate. Continuances are a tactical matter which the defendant's counsel should control.

I urge your prompt and favorable action on this measure.

Sincerely,



Michael J. Dunleavy
Governor

Enclosure