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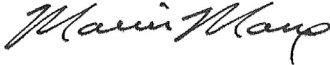
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 12, 2021

SUBJECT: Alaska Court System budget amendment
(CSHB 69(FIN); Work Order No. 32-GH1509\I.1)

TO: Representative David Eastman

FROM: Marie Marx 
Legislative Counsel

The amendment you requested, relating to the budget of the Alaska Court System (court system), is attached. Please be aware that the contingency language you requested raises issues under the separation of powers doctrine and under art. II, sec. 13 of the Alaska Constitution, the confinement clause.

The court system has implemented the CourtView (public index) system to provide public access to court records. Public access to court records is governed by Administrative Rules 37.5 through 37.8, and the public index is governed by Administrative Rule 40. Your amendment requires the court system to, not later than September 1, 2021, publish or make available through the public index criminal sentencing information for sentences imposed on or after September 1, 2021.

Under art. II, sec. 13 of the Alaska Constitution, "bills for appropriations shall be confined to appropriations." The legislature's power to attach intent or qualifying language to an appropriation has significant limits. In *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001), the Alaska Supreme Court established a five-part test for substantive contingencies related to appropriations:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is appropriate, to an appropriations bill.

Id. at 377. Language that falls outside this standard is unenforceable because it violates the confinement clause of the Alaska Constitution. The language you requested may go beyond what a court would allow in an appropriation bill based on the *Knowles* test. A court might find your requirement that the court system publish sentencing information through the public index has the effect of amending existing law or enacting new law.

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Additionally, art. IV, sec. 15 of the Alaska Constitution allows the legislature to change rules of court governing practice and procedure, but requires a two-thirds vote in each house to effect the change. Whether the legislature may amend the court system's rules of administration with respect to the parts of the public index that should be made public is uncertain. Rules of administration include the traditional areas of court internal administration that are protected by the doctrine of separation of powers. The content of the public index appears to be an area administrated by the court system and could be found to be within an area of judicial administration protected by the doctrine of separation of powers.

For these reasons, the amendment could be found unconstitutional and unenforceable under the separation of powers doctrine and the confinement clause.

Please let me know if I may be of further assistance.

MYM:lme

21-127.lme

Attachment