

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 5, 2007

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 7

"An Act relating to the voting rights of felons."

HEARD AND HELD

SENATE BILL NO. 89

"An Act relating to requiring electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang."

HEARD AND HELD

SENATE BILL NO. 36

"An Act relating to sentencing for the commission of certain offenses influenced by alcohol and to the offense of consumption of alcohol in violation of sentence."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 7

SHORT TITLE: FELONS' RIGHT TO VOTE

SPONSOR(s): SENATOR(s) DAVIS

01/16/07	(S)	PREFILE RELEASED 1/5/07
01/16/07	(S)	READ THE FIRST TIME - REFERRALS
01/16/07	(S)	STA, JUD, FIN
01/25/07	(S)	STA AT 9:00 AM BELTZ 211
01/25/07	(S)	<Above Bill Hearing Canceled>
02/22/07	(S)	STA AT 9:00 AM BELTZ 211
02/22/07	(S)	Moved CSSB 7(STA) Out of Committee

02/22/07 (S) MINUTE(STA)
02/23/07 (S) STA RPT CS 1DP 2NR SAME TITLE
02/23/07 (S) DP: MCGUIRE
02/23/07 (S) NR: FRENCH, GREEN
03/05/07 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 89

SHORT TITLE: ELECTRONIC MONITORING OF GANG PROBATIONER
SPONSOR(s): SENATOR(s) WIELECHOWSKI

02/21/07 (S) READ THE FIRST TIME - REFERRALS
02/21/07 (S) JUD, FIN
03/05/07 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

Thomas Obermeyer, Aide
to Senator Bettye Davis
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 7 on behalf of the sponsor

Margaret Pugh, Former Commissioner
Department of Corrections
Juneau, AK

POSITION STATEMENT: Spoke in support of SB 7

Michael Macleod-Ball, Executive Director
American Civil Liberties Union of Alaska
Anchorage, AK

POSITION STATEMENT: Spoke in support of SB 7

Natalie Landreth, Staff Attorney
Native American Rights Fund
Anchorage, AK

POSITION STATEMENT: Spoke in support of SB 7

Daniel Levitas, Consultant
Alaska Civil Liberties Union of Alaska
No address provided

POSITION STATEMENT: Spoke in support of SB 7

Dwayne Peeples, Deputy Commissioner
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801

POSITION STATEMENT: Answered questions about the Department of Corrections fiscal note for SB 89

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:33:39 PM](#). Present at the call to order were Senator McGuire, Senator Wielechowski, and Chair French. Senator Therriault arrived during the course of the meeting.

SB 7-FELONS' RIGHT TO VOTE

CHAIR FRENCH announced the consideration of SB 7.

[1:34:24 PM](#)

THOMAS OBERMEYER, aide to Senator Davis, read the sponsor statement into the record as follows:

It is essential to a democracy that every citizen who wishes to be a productive member of society be afforded the right to vote. Art. I, Sec. 12 of the Alaska Constitution provides that criminal administration is based on the "principle of reformation" in addition to protecting the public, community condemnation of the offender, and the rights of victims. Political participation helps with rehabilitation and reintegration into the community.

SB 7 grants felons the right and opportunity to vote if they wish to exercise that right immediately after having served their time. In Alaska 5,000 Alaskans have lost their right to vote because of felony convictions. Current Alaska law bars the vote to persons convicted of felonies of moral turpitude until the expiration of a post-incarceration period of parole or probation, which is often years after they have reentered society as productive citizens and tax payers. While Vermont and Maine do not disenfranchise felons at all, other states are reforming their laws to allow felons to vote either after release (13 states), after release and completion of probation or parole (21 states including Alaska), or permanent disenfranchisement to certain felons (14 states).

Harsh sentencing laws over the past 30 years have allowed the prison population to burgeon, while reducing the rehabilitative model to an anachronism. Over 4.7 million Americans or 1 in 43 adults cannot vote due to felony convictions, with 1/3 or more of them due to alcohol and drug offenses. Of those incarcerated in Alaska 47 percent are white; 37 percent Alaska Native; 11 percent African American; 2 percent Hispanic; and 3 percent Asian/Pacific Islanders. Minority felons are disproportionately disenfranchised under current law and the harm of continued disenfranchisement after release is exacerbated by stigma and other forms of discrimination as they try to reenter society.

SB 7 will help rehabilitate released felons by welcoming them back into the voting community immediately after release and encouraging them to become good citizens. Studies show that felons who vote have a lower rate of recidivism. SB 7 will streamline the process by which the state restores voting rights to felons and thus will save money.

[1:39:17 PM](#)

SENATOR WIELECHOWSKI recapped that if someone is released from prison and is still on probation, that person is not eligible to vote. Under SB 7 that person would be entitled to vote upon release.

MR. OBERMEYER said correct and a primary reason for the bill is that enfranchisement is rehabilitative. Get them back into the community because they are with us anyway, he said.

SENATOR WIELECHOWSKI asked how house arrests would figure in.

MR. OBERMEYER replied the Department of Corrections and the Division of Elections would need to establish rules to handle such circumstances.

CHAIR FRENCH opened public testimony.

[1:41:22 PM](#)

MARGARET PUGH, Former Commissioner of the Department of Corrections and retired state employee, stated strong support for SB 7 and described the issue as emotional for some and political for others. Amendment 14 of the US Constitution gives each state the right to determine who votes and who does not

vote and clearly there is not just one American way to restore voting rights, she stated.

Some states never restore the right; some restore the right upon petition of the governor for a pardon; some restore the right after incarceration regardless of probation or parole; and some states, like Alaska, restore the right after probation and parole have been served. She noted that in Alaska almost all felons have some period of probation and/or parole following release from incarceration.

MS. PUGH said American democracy is an evolving process. In the early days the elite governed and as a result disabilities were visited on women, slaves, illiterates, and non-property owners. Those legal disqualifications continued for years and some states, notably in the south, instituted other disabilities such as the poll tax. Ms. Pugh relayed that her great-grandfather had to pay poll taxes and her great-grandmother could not buy her own sewing machine.

The purpose of these disabilities was clearly discriminatory and fortunately most of those practices have been overcome. She pointed out that today her great-grandmother could purchase a sewing machine on her own and she could vote. Today there is no more slavery, there are no more poll taxes, voters are not required to be literate, and vision or hearing is not a requirement. However, she said, a disability that many states have not revisited, is the one that is visited upon convicted felons.

MS. PUGH said she views SB 7 as a first step because all it does is restore voting rights to persons convicted of felonies upon release from custody; they could vote before probation and parole is complete. Because the Alaska constitution says that voting rights are surrendered by people convicted of felonies of moral turpitude, and because most felonies in Alaska are, by definition, considered to be crimes of moral turpitude, SB 7 would not restore voting rights to very many people, she stated.

SB 7 does not restore other forfeited civil rights. For example a convicted felon on probation and/or parole must submit to search of a person, home, or property of any sort without protection of a warrant; must provide urine samples; must continue treatment; can not work in certain fields; and can not bear arms.

MS. PUGH pointed out that restoring voting rights does not present a threat to any person, place or thing. This is a very small thing for the legislature to do, she said, but it's a huge leap for American democracy. In her view the current practice is blatant racial discrimination and it is time for change.

[1:50:58 PM](#)

SENATOR McGUIRE agreed with the previous testimony and said she has never understood why restoring a felon's right to vote would be problematic.

She asked Ms. Pugh to comment on testimony last year from the Department of Corrections suggesting that it would be difficult to maintain a registry of the different conditions of release to show the people who have their voting rights restored and those who do not.

MS. PUGH replied it is an issue, but the Department of Corrections (DOC) and the Permanent Fund Division already exchange data bases for forfeited permanent fund dividends so the technology is available for DOC and the Division of Elections to exchange data. There will always be a few issues, but there is no reason they can't be overcome, she said.

SENATOR McGUIRE asked if she believes that rehabilitation is still a tenet of the penal system. If so, how large a part does restoring voting rights play in the rehabilitation process.

MS. PUGH said the very definition of correction means to change and correct and not punish. "I believe that corrections should have treatment programs of all types and offenders should be able to vote when they are released from custody," she stated.

[1:57:34 PM](#)

NATALIE LANDRETH, Staff Attorney, Native American Rights Fund (NARF), stated strong support for SB 7. The most critical reason is that the current law disproportionately impacts Alaska Natives because they comprise a disproportionate part of the felon population. In 2004 a study by the Alaska Judicial Council concluded: that Alaska Natives were overrepresented in the felon population; that Alaska Natives receive longer sentences than non-Natives; that Alaska Natives typically have lower per capita incomes than non-Natives and can not afford private attorneys; and that people with private counsel generally served less time in prison and on parole and were generally more successful in getting reduced charges.

MS. LANDRETH said Alaska Judicial Council statistics highlight the following: 83 percent of all felons are male, almost 50 percent are under 30 years of age, 50 percent are Caucasian, 37 percent are Alaska Native, 63 percent have alcohol problems, 45 percent have drug problems, more than 33 percent have identifiable mental health problems, and almost 80 percent financially qualified for a public defender.

MS. LANDRETH, responding to a question from the state affairs hearing, relayed that "65 percent of felons were convicted of class C felonies with property crimes comprising 30 percent and drug crimes 20 percent. Murder and sexual assault by the way are only 2 percent and 12 percent of these felons respectively."

In conclusion she said that the people most likely to benefit from the bill are young men who need help reintegrating into society. Re-enfranchising these people after they have served their sentence is a positive and empowering way to achieve that.

[2:02:16 PM](#)

MICHAEL MACLEOD-BALL, Executive Director, American Civil Liberties Union of Alaska (ACLU), noted that he had submitted written testimony. He asked the committee to think of the issue of restoring voting rights in the larger context of the right to rehabilitation under the state constitution. The people who would benefit from this law are the ones that the court system has said are ready and worthy of reentering society. The scope and context of rehabilitation should encompass the notion of giving these people a vote of confidence to exercise a basic right of citizenship - the right to vote.

He suggested committee members refer to the December 2006 issue of the Alaska Law Review. It contains a relevant article by Christopher R. Murray titled "Felon Disenfranchisement in Alaska and the Voting Rights Act of 1965."

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DANIEL LEVITAS, American Civil Liberties Union (ACLU), said he submitted written testimony. His work focuses on the issue of felon enfranchisement and in the last 10 years 16 states have taken positive steps in this direction. Of the 11,000 Alaskans who are disenfranchised as a result of felony convictions, roughly 54 percent would be reenfranchised if SB 7 were to pass.

MR. LEVITAS said the issue enjoys bipartisan support because it is a fundamental issue of democratic participation, rights and community safety. It's axiomatic that giving former offenders a

stake in society will make them feel less inclined to repeat their behavior. In fact, one study shows a clear link between voting behavior and lower re-arrest rates.

MR. LEVITAS echoed Ms. Pugh's point that SB 7 simply restores the right to vote in a narrow and specific context. It does not restore full civil rights to people on parole/probation or parole. In conclusion he said SB 7 will reduce risks to communities by promoting the reintegration of ex-offenders.

CHAIR FRENCH noted that Deputy Commissioner Peeples sent a letter dated March 1 responding to a question raised at the previous hearing. The data shows the numbers of probationers and parolees whose last conviction was a felony crime of moral turpitude. Unclassified felonies are the most serious and C felonies the least.

Unclassified Felony:	101
A Felony:	200
B Felony:	728
C Felony:	1,640

He asked Mr. Levitas if he is aware of any state that conditions the right to vote upon the severity of the crime.

MR. LEVITAS replied the majority of states use the simplest scheme of not distinguishing between particular crimes, but it is not unheard of to make a distinction and set aside enfranchising people who commit violent crimes or crimes against persons until release from probation or parole. The patchwork approach can be quite confusing and perhaps it contributes to the fact that most felons who are released from jail believe they can never vote again, he said.

[2:15:47 PM](#)

CHAIR FRENCH found no further public testimony and announced he would hold SB 7 in committee to look at possible modifications.

At ease

SB 89-ELECTRONIC MONITORING OF GANG PROBATIONER

[2:16:42 PM](#)

CHAIR FRENCH announced the consideration of SB 89 by Senators Wielechowski and McGuire.

SENATOR WIELECHOWSKI, Co-Sponsor of SB 89, explained that the bill is in response to burgeoning gang-related activity,

particularly in Anchorage. Anchorage has had 20 gang-related crimes this year and in 2006 the municipality had 122 gang-related cases. Thus the issue is a legislative priority for both the Anchorage Police Department and the Municipality of Anchorage.

Basically SB 89 requires gang members who are on probation to wear electronic ankle monitors. This would help police to monitor violent offenders' movements and to supervise their activities. He noted that San Bernardino California initiated a similar program that has been very successful.

SENATOR WIELECHOWSKI referenced the fiscal note and suggested it is a little high. He understands the cost for each unit is about \$8 per day so most of the cost in the fiscal note is for personnel services, which increase in successive years. The question to address, he said, is whether the monitoring should be active or passive.

CHAIR FRENCH asked for an explanation of the difference between active and passive management.

SENATOR WIELECHOWSKI said his understanding is that there is a continuum for management, but typically one person is able to monitor 15 people. Under active monitoring, which is what the fiscal note assumes, all movement would be monitored continually. If a person is shown visiting a place that is off limits, a police officer could be sent to investigate. Under a more passive option, someone would check the monitor several times a day. If the monitor showed that a person visited some place that was off limits, a probation officer or police officer would possibly be sent out to investigate.

CHAIR FRENCH asked if there are known vendors that supply this service.

SENATOR WIELECHOWSKI said he couldn't speak to specifics, but he understands that electronic monitoring is currently used and that there are different management levels.

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SENATOR McGUIRE, Co-Sponsor of SB 89, added that this may seem like an unusual step, but indications from other states are that electronic monitoring is a successful way to contain activity. "We want to stop the deaths. We want to stop these young people, in particular young people, from getting involved in these gangs

and ending up losing their lives and this is one step toward it," she stated.

CHAIR FRENCH opened public testimony.

2:24:41 PM

CAROL COMEAU, Superintendent of the Anchorage School District and member of a task force on gang and youth violence, voiced support for the legislation if the courts have adjudicated the person as a gang member. She said the district already has students who are on probation and wearing electronic ankle bracelets in school. SB 89 would give the authorities another tool and would allow students to go to school and get an education.

MS. COMEAU referenced active and passive monitoring and opined that the judge should decide which method to use for a particular individual.

SENATOR WIELECHOWSKI asked if the task force she is on had recommended either active or passive monitoring.

MS. COMEAU said the policy task force did not make a recommendation, but Chief Heun would probably have that information.

2:27:20 PM

KEN GARDNER COBB, Anchorage Police Department, explained that part of his job is to coordinate a response to gang activity and SB 89 would be an asset in that effort. He has done some Internet research and has learned that the ankle monitors have Global Positioning System (GPS) tracking capabilities. Also they have software so that inclusion and exclusion zones can be established. An inclusion zone might be a school or a place of employment and an exclusion zone might be a night club, movie theatre or a certain part of town. If the device works as described and is cost-effective there is reason for great enthusiasm.

He said the bill calls for adjudicating gang members who have been involved in gang motivated crimes. Those are crimes that are for the benefit of a gang or in association with a gang. In Anchorage a majority of the crimes are what are called gang related, which is where a gang member or associate is involved in a fight over a girl, over property, or over a showing of disrespect.

Initially the bill will not affect many people so it would be a cost-effective trial. If it is effective the program could be expanded to include gang related crimes. "That is where we will see the real value in the future," he said.

[2:31:17 PM](#)

RICK SVBODNY, Chief Assistant District Attorney General, Criminal Division, stated support for SB 89. Gang violence, particularly in Anchorage, is a major problem and is a difficult area to prosecute. SB 89 would provide a tool that could benefit law enforcement and the prosecution, he opined.

MR. SVBODNY, responding to previous testimony, said that under the current structure it is probable that Blakeley would be implicated. That is the state would be required to prove that the individual is a gang member or has gang involvement. He suggested that a way to get around that is to require wearing an ankle monitor as a general condition of probation. He noted that that gives the judge discretion, which is absent under the current structure. If the judge does not exercise that discretion he or she would have to make written findings to explain why an ankle bracelet is not appropriate.

If wearing an ankle monitor is a condition of probation, the prosecution would not be required to prove gang involvement beyond a reasonable doubt at trial. At a sentencing hearing the prosecution would have to prove, by a preponderance of the evidence, that there was gang involvement. That is another and easier way that the underlying purpose of the bill can be fulfilled, he stated.

MR. SVBODNY said just two district attorneys responded to a statewide query and they told him that the aggravating factor necessary for this to be implemented has rarely, if ever, been found. He suggested that given that history this would not be implemented very often.

MR. SVBODNY referenced the discussion regarding active versus passive monitoring and opined that technology is ahead of what is recognized here. In fact parents are able to monitor their children's movements using GPS tracking devices that are implanted in their kid's shoes. The idea behind SB 89 is to keep gang members from congregating and technology isn't too far from helping that to happen in a cost effective way, he said.

He relayed that he is a member of the Policy Board of the Western States Information Network, a regional intelligence

sharing system that deals with gang members and drugs. Part of that includes running a watch center in Sacramento to avoid conflicts or shootouts when different agencies end up working on different cases in the same general area. Basically the officers wear ankle monitors and that information goes to the center for deconfliction. In that system one person is able to monitor the entire state of California and the entire state of Hawaii. Clearly, it can be cost-effective, he stated.

MR. SVBODNY pointed out that judges continue to rule that electronic monitoring is the functional equivalent of jail time. To address that he would suggest that the bill specifically say that someone who is on probation and wearing an ankle monitor does not get credit for serving jail time. In addition he asked the committee to consider allowing the parole board to make this a condition of parole.

Responding to Ms. Comeau's comment about wearing ankle monitors to school, he advised that the bill applies to adults. In his view it would not include juveniles.

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SENATOR WIELECHOWSKI responded that he does not believe this legislation is the appropriate vehicle to define incarceration so he does not favor incorporating the suggestions.

MR. SVBODNY clarified he was not suggesting the bill define incarceration. Simply say that under this bill electronic monitoring does not count as incarceration.

CHAIR FRENCH asked for confirmation that his canvas of district attorneys found that this aggravator is rarely used.

MR. SVBODNY replied he was told that it has never been found. He understands that it has been stipulated to a couple of times in the Anchorage Superior Court.

CHAIR FRENCH added "as a course of agreed upon disposition."

MR. SVBODNY replied it would be that or with other aggravating factors having been found or stipulated to.

CHAIR FRENCH responded, "Stipulated to, but not found. Not after a contested hearing."

MR. SVBODNY agreed.

CHAIR FRENCH remarked that making it a general condition that every convicted felon is subject to takes care of the problem of proof, but then someone would have to review 2-3 thousand felony cases every year to decide who would wear the expensive ankle monitors.

MR. SVBODNY replied it isn't that onerous because there must be a nexus between a condition of probation and the crime that was committed. "A judge may decide if a person has shoplifted 80 times from Fred Meyer that they are going to monitor you to see that you don't go to Fred Meyer. But they would have to be making that nexus."

CHAIR FRENCH questioned what the nexus is between an ankle monitor and criminal street gang activity.

MR. SVBODNY replied "You presume that if a court makes a finding that this is gang related - that is by preponderance of evidence because it is a condition of probation - that it is necessary for there to be electronic monitoring unless the court finds a reason not to do it."

CHAIR FRENCH mused he can see the defense argument already. That is that the first ankle monitor is of no value whatsoever; it will provide no information about whom the individual is associating with. Not until a number of monitors are out in the community will it be possible to see whether people wearing ankle monitors are spending time in the same proximity.

SENATOR WIELECHOWSKI said one rationale is to keep gang members from congregating, but it's also a powerful tool to track gang members and keep them from going to prohibited places.

SENATOR McGUIRE opined that wearing an ankle monitor might help some people get out of a gang and on with their lives. Certainly other gang members wouldn't want someone around who was wearing an ankle monitor and was under scrutiny.

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CHAIR FRENCH noted that he received a letter from Fairbanks Police Chief Daniel P. Hoffman supporting the bill.

DWYANE PEEPLES, Deputy Commissioner, Department of Corrections, stated that the department supports the concept of SB 89. He explained that to develop the fiscal note he worked with the prime sponsor of the companion House bill [HB 133]. It assumes that there would be a fairly large body of offenders that would

be monitored this way. Coming up with a number has been difficult, but right now about 96 people with gang related associations have been identified.

CHAIR FRENCH said he would be interested to know whether all the people are from Anchorage.

[2:49:50 PM](#)

SENATOR THERRIAULT joined the meeting.

MR. PEEPLES said juvenile justice has about 75 individuals in that would fall under this issue and the Municipality of Anchorage has identified 122 individuals. The fact that there are people in both the juvenile and the adult system is an indication that this is a pervasive issue, he said. And the fiscal note assumes that the numbers will build by about 15 to 20 per year. According to the people running the San Bernardino system, this is a very tough group to monitor, which is part of the argument for having GPS tracking.

MR. PEEPLES reported that system vendors are currently available in Alaska so that isn't a big issue.

CHAIR FRENCH, noting the high and escalating fiscal note, asked if the fiscal note compensates for population growth or assumes that more and more people will be placed on probation.

MR. PEEPLES responded he calculated 15 additions each year.

CHAIR FRENCH asked if he was saying that the cost to monitor 15 probationers for a year is \$174,000.

MR. PEEPLES said yes and most of the cost is staff time. He elaborated that the original interpretation was for active continuous monitoring - 24/7. The computer software that monitors the GPS would notify whoever is responsible if someone exits or enters an exclusion zone. Individuals could also be monitored in the field using a laptop. He noted that the California program, which is fairly intensive, has a 1:20 monitoring ratio and that is inadequate. After looking at other models he chose a 1:15 ratio.

SENATOR WIELECHOWSKI asked what a passive system would entail and how much it would save.

MR. PEEPLES replied there are various models, but the system could be set up with large inclusion zones. "If it went off you

could go pick somebody up and not be too concerned about how much movement they had. Or you could just download the GPS on a daily basis, review what they've done and then do some reinforcement on if they are deviating out of an inclusion zone." Under the least active model one person could probably monitor 50 people, he said.

SENATOR WIELECHOWSKI asked if he had prepared a fiscal note for a passive system.

MR. PEEPLES said no, but it would be fairly easy to do.

SENATOR WIELECHOWSKI said he'd like to see that so the options could be evaluated.

SENATOR McGUIRE commented she appreciates the work that has been done on the fiscal note and she looks forward to seeing one for a passive model.

CHAIR FRENCH found no further questions or testimony and announced he would hold SB 89 in committee to allow time to get some questions answered.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:55:54 PM](#).