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Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

FEBRUARY 3, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 688 - "An Act making special appropriation to the Department of Public Safety for a computerized fingerprint system; and providing for an effective date."

SB 687 - "An Act relating to the issuance of search warrants; and changing Rule 37, Rules of Criminal Procedure."

SB 299 - "An Act relating to elections."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:45 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Bennett. Senator Hohman was absent.

The first item on the agenda was SB 687. Barry Stern, representing the Department of Law was called before the committee to testify. Mr. Stern expressed the Department's support for this SB 687 and suggested an amendment to this bill which would require persons who request warrants to first contact the District Attorney to avoid any warrants be inappropriately issued.

Mr. Bruce responded to Mr. Stern's suggested amendment, stating that he had spoken to several District Attorney's and they had expressed concern that by having to contact the District Attorney, it would delay the issuance of the warrant.

The committee declined to adopt Mr. Stern's amendment.

Chairman Rodey next called Mr. Korhonen, representing the State Troopers, before the committee. Mr. Korhonen testified, expressing the State Troopers support for SB 687.

Senator Ray moved that SB 687 be moved from committee with individual recommendations. There was no objection, and the bill was passed. Senator Rodey, Ray, Parr, and Bennett all signed do pass.

Senator Bennett was excused from the committee due to Finance Committee responsibilities.

The next item on the agenda was SB 688.

Chairman Rodey recalled Mr. Korhonen before the committee. Mr. Korhonen expressed the State Troopers support for SB 688 and gave a detailed explanation of the system's capabilities.

After brief discussion of the bill, Senator Ray moved that SB 688 be passed from committee with individual recommendations. There was no objection and the bill was passed. Senators Rodey, Ray, and Parr all signed do pass.

The last item before the committee was SB 299. Chairman Rodey called Patty Ann Polley, Division of Elections, to testify. She spoke in favor of three specific sections of the bill; Sec. 6, Sec. 9, and Sec. 20, and asked that the committee consider moving these three sections through the committee as expeditiously as possible to allow for them to be in effect for the 1982 election.

Senator Ray moved that the committee delete all sections from SB 299 except Sec. 6, Sec. 9, and Sec. 20. There was no objection and the amendment was adopted.

Senator Ray moved that the committee move SB 299 from committee. There was no objection and the bill was passed. Senators Rodey and Parr signed do pass. Senator Ray signed no recommendation.

Chairman Rodey adjourned the meeting at 2:30 P.M.



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SECTIONAL ANALYSIS OF SB 687

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* Sec. 1 - Amends 12.35.010 to allow for warrants to be telephonically conveyed.

* Sec. 2

(A) - Allows a judge or magistrate to issue a warrant by telephone if there is probable cause to believe that requiring a law enforcement officer to appear before him/her would delay the issuance of the warrant and that delay could result in the loss or destruction of evidence.

(B)-(E) Sets out the procedure for issuing a telephonic warrant: Requires that the applicant who requests the warrant on the telephone prepare a document to be known as a "duplicate original warrant" and shall read its verbatim to the judicial officer. Requires the judicial officer on the other end of the line to have before him from the beginning the "original warrant" and to enter, verbatim, what is so read to him on the original warrant.

After the officer on one end of the line gives the information from the warrant to the judicial officer on the other end, and if the judicial officer decides to issue the warrant, the procedure is for him to direct the person requesting the warrant to sign the judicial officer's name on the duplicate original warrant and for the judicial officer then to immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued.

(F) states that, absent a finding of bad faith, warrants issued under (A) of this section are not subject to suppression.

* Sec. 3 - Amends 12.35.120, definition of a search warrant.

* Sec. 4 - Notification of the amendment to Rule 37, Rules of Criminal Procedure.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 27, 1981

SUBJECT: Telephonic search warrants
(Work Order No. 12-1960)

TO: Senator Patrick M. Rodey

FROM: James H. Lear
Legislative Counsel *JHL*

You have requested a bill to provide for telephonic search warrants so that rural officers may increase the speed of searches and seizures. Rule 37, Rules of Criminal Procedure promulgated by the Supreme Court of Alaska covers the subject of search warrants. According to Article IV, sec. 15 of the Constitution of Alaska this rule may be changed only by a two-thirds vote of the members elected to each house of the legislature. The enclosed draft would amend AS 12.35.010 which also covers the subject of issuance of search warrants. If this type of legislation were successful, then the onus would be on the Supreme Court to conform Rule 37 to the language in this bill.

The same legislative procedure was followed in 1969 when the Sixth Legislature enacted Chapter 17, SLA 1969, amending, interestingly enough, Alaska State Supreme Court Rule 37(a). As you see, this legislative procedure is not without precedent. Be assured that the subject matter proposed by this bill is also not without precedent. The new language in the proposed bill is taken almost verbatim from Rule 41, Federal Rules of Criminal Procedure (Title 18, U.S.C.A.).

The states of California and Arizona have already enacted language similar to Rule 41(c)(2) and other states are contemplating similar enactments.

By patterning your bill after the provisions contained in Rule 41(c)(2), the courts of Alaska will have the benefit of interpretations given by the federal courts. The subject of

Senator Patrick M. Rodey
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telephonic search warrants was addressed by the Sixth Circuit Court of Appeals in U.S. v. Shorter, 600 F.2d 585 (1979, C.A. 6 Ohio); the Ninth Circuit Court of Appeals in U.S. v. Johnson, 641 F.2d 652 (1980); and the Second Circuit Court of Appeals in U.S. v. Turner, 558 F.2d 46 (2d Circuit, 1977). These cases, as well as earlier United States Supreme Court decisions, uphold the constitutionality of the provisions that appear in the proposed bill draft.

The enclosures will provide you with good background material on the subject of telephonic search warrants. At page 589 of U.S. v. Shorter, you will find a good summary in layman's terms of the procedure contemplated by Rule 41(c)(2). There is also good background material following Rule 41(c)(2) in the form of Notes of Advisory Committee on Rules under the heading 1977 Amendment. Also read Notes of Committee on the Judiciary, Senate Report No. 95-354. Amendments Proposed by the Supreme Court in the Rule 41 material.

If I may be of further assistance, do not hesitate to contact me.

JHL:ljb

Enclosures