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76

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COMMITTEE REPORT
SENATE

FURTHER: JUDICIARY
FINANCE

1/22/85

Date 2/18/85

Mr. President

The Committee on STATE AFFAIRS considered SB 76
rights of prisoners; and amending Rule 5(b) of the Alaska Rules of
Criminal Procedure.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 76
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Bill Kay

Chairman

Chairman recommendation

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 76

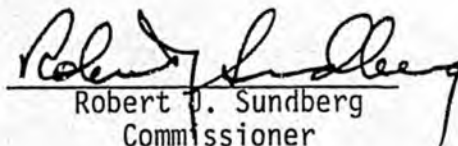
Support

February 1, 1985

SB 76 - "An Act relating to rights of prisoners; and amending Rule 5(b) of the Alaska Rules of Criminal Procedure."

The purpose of this legislation is to clarify the rights of Driving While Intoxicated suspects during the period they are to be tested.

Occasionally suspects have been able to delay the implementation of Driving While Intoxicated testing by demanding to speak to their attorney prior to the admission of the test. This statute establishes the priority of the testing without interfering with the rights of the suspects. This will allow for smoother processing of Driving While Intoxicated suspects by law enforcement officers and thus improve their efficiency.


Robert J. Sundberg
Commissioner

SENATE BILL 76

"An Act relating to rights of prisoners: and amending Rule 5(b) of the Alaska Rules of Criminal Procedure."

SB 76 modifies AS 12.25.150(b) and Alaska Criminal Rule 5(b) thus eliminating the difficulties caused police officers who are attempting to give breath alcohol test to DWI suspects. Since it would force a change in a rule promulgated by the Alaska Supreme Court, it must be passed by a two-thirds majority of each house of the Alaska Legislature.

The amendment would allow officers to wait until after they have given breath tests to drunk drivers to permit the suspects to call their attorneys. There is no constitutional impediment to this change, as the constitution already permits the gathering of such evidence without a search warrant, or giving the defendant access to an attorney, as a search incident to an arrest. (Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908(1966); Burnett v. Municipality of Anchorage, 678 P.2d 1364 (Alaska App. 1984), cert. den. 36 Cr.L. 2001)

Even though there is no right to refuse a breath test under Alaska law (Palmer v. State, 604 P.2d 1106 (Alaska 1979, and Jensen v. State, 667 P.2d 188 (Alaska App. 1983)), the Supreme Court of Alaska in Copelin v. State, 659 P.2d 1206 (Alaska 1983), stated that AS 12.25.150(b) and Criminal Rule 5(b) required that a DWI suspect be given access to a telephone, if he request it, before taking a breath test or videotaped sobriety test. This causes delay of 15 to 30 minutes, or longer, in giving the breath test--a test for a substance that is quickly disappearing from the defendant's body.

This change would also be in response to the recommendation of the Presidential Commission on Drunk Driving "That an individual's right to consult his attorney may not be permitted to unreasonably delay administration of the test." A common defense tactic in drunk driving trials is to suggest that the defendant may have been intoxicated at the time of the breath test, but that his breath alcohol concentration at the time of his driving was not over the legal limit. It is therefore imperative that there be as little delay as possible prior to the breath test.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 76
 Title: Rights of prisoners.....
 Sponsor: Sen. Abood
 Requestor: Sen. State Affairs
 Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 2-6-85

Approved by Commissioner: Michael J. Cleary Date: 2-6-85
 Agency: Public Safety

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