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# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 2, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-30-90

The JUDICIARY Committee considered:

HB 465

HOUSE BILL NO. 465

MONITOR PHONE CALLS OF PRISONERS

"An Act relating to telephone access and monitoring inside correctional facilities."

**RECOMMENDATIONS:**

- be replaced with CSHB <sup>465</sup> ~~456~~ (JUD)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

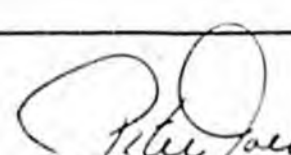
- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) Corrections 2/2/90
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING:**  
(Check approp. column)

\_\_\_\_\_  
*Mike Din*  
 \_\_\_\_\_  
*J. Ellis*  
 \_\_\_\_\_  
*Bob Shunk*  
 \_\_\_\_\_  
*Pete Joe*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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	Do Not Pass	No Rec	Amend
<i>Mike Din</i>		✓	
<i>Bob Shunk</i>		✓	

  
 \_\_\_\_\_  
 Chairman's Signature

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 465

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to telephone access and monitoring

7

inside correctional facilities."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

\* Section 1. AS 33.30.231 is amended to read:

10

Sec. 33.30.231. TELEPHONE [ACCESS AND] MONITORING INSIDE CORREC-

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TIONAL FACILITIES. [INSTITUTIONS. (a) EXCEPT AS PROVIDED IN (b) OF

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THIS SECTION, A PRISONER SHALL HAVE REASONABLE ACCESS TO A TELEPHONE.

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(b) A PRISONER WHO IS CLASSIFIED MAXIMUM CUSTODY, IS PLACED IN

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SEGREGATION AS PUNISHMENT FOR A RULE INFRACTION, OR IS PLACED IN

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SEGREGATION BECAUSE THE PRISONER POSES A THREAT TO OTHERS OR TO THE

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SECURITY OF A CORRECTIONAL FACILITY MAY NOT HAVE ACCESS TO A TELEPHONE

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EXCEPT TO COMMUNICATE WITH AN ATTORNEY, TO OTHERWISE COMMUNICATE AS

18

PROVIDED IN AS 12.25.150, OR IN AN EMERGENCY AS DETERMINED APPROPRIATE

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BY THE COMMISSIONER.

20

(c)] Notwithstanding AS 42.20.300 and 42.20.310, in order to

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preserve the security and orderly administration of the correctional

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facility [INSTITUTION] and to protect the public, the commissioner may

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authorize the use of monitoring or recording equipment to listen to a

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telephone conversation of a prisoner convicted of a crime, if a

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warning is posted by the telephone informing the prisoner that a call

26

may be monitored or recorded. A telephone call between an attorney

27

and a prisoner may not be monitored or recorded except when authorized

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by a court.



State of Alaska  
**ombudsman**

Duncan C. Fowler

Reply to:

- P O Box 102636  
Anchorage AK 99510-2636  
(907) 563-3673  
(800) 478-2624
- P O Box W0  
Juneau AK 99811-3000  
(907) 465-4970  
(800) 478-4970
- P O Box 74358  
Fairbanks AK 99707  
(907) 452-4001  
(800) 478-3257

March 5, 1990

Representative Max Gruenberg, Co-Chair  
House Judiciary Committee  
Alaska State Legislature  
Post Office Box V  
Juneau, Alaska 99811-3100

RE: HB 465  
Inmate telephone access

Dear Representative ~~Gruenberg~~ Gruenberg:

My office supports the passage of HB 465 but asks that you consider a modification. The proposed change would assure phone calls placed by inmates to The Office of the Ombudsman were not recorded or monitored. This is similar to the privilege granted to telephone calls to attorneys. Assuring this privilege is consistent with the legislative philosophy stated in the Ombudsman Act.

The Alaska Ombudsman Act, passed in 1975, recognizes persons in state institutions, whether correctional facilities or mental hospitals, have a great *potential* to be abused by their "keepers." It also recognizes that the state has an interest in receiving and investigating such allegations of mistreatment. The state needs to assure proper and humane treatment is given those totally in its care, custody and control.

Because of this, AS 24.55.270 LETTERS TO OR FROM THE OMBUDSMAN is included in the Alaska Ombudsman Act as a separate provision. It requires letters to persons "held in custody" from the Office of the Ombudsman be handled as privileged or legal mail. It also protects outgoing mail to the ombudsman. Other portions of the act require the ombudsman to maintain confidentiality over names of complainants, unless necessary to complete the investigation. This was done to prevent retaliation by government officials to those who needed to contact this office.

I note that in 1975, when the Alaska Ombudsman Act was passed, telephone use by inmates was rare. There would have been little reason for lawmakers to consider including such a provision then. Since then inmate access to phones has become common. That fact has made it easier and more efficient for my staff to be able to respond to inmate and patient complaints. Simply, it is easier and faster for ombudsman investigators to accept and resolve a complaint by phone than by mail.

Over the years we have received several valid complaints from inmates. They have included fire safety concerns, medical care, lack of access to legal materials, being held past release dates and non-responsiveness of the public

Representative Greenberg  
defender. Certainly, a call to my office (and the possibility we can resolve the issue) costs the state less than a law suit filed by an aggrieved inmate.

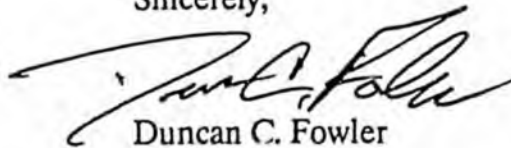
I ask that the committee consider the following change to HB 465:

(1) In line 26 after the word "attorney" insert "or the Office of the Ombudsman."

I have discussed this change with Assistant Attorney General Mike Stark and Corrections' Deputy Commissioner Frank Prewitt. They both support my proposed amendment to this bill. I was also pleased with the verbal support to this amendment by the members of the Health and Social Services Committee. They offered this amendment could best be made in the Judiciary Committee.

Please let me know if you have any questions about my suggestions. I would be happy to appear before your committee in case any of the members have any questions about this proposed amendment.

Sincerely,



Duncan C. Fowler  
Ombudsman

DCF:pjc

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 1, 1990

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to access and monitoring of telephone calls in correctional facilities.

The bill repeals limitations on access to telephones by prisoners who are classified maximum custody or in segregation. The bill also repeals the authority to monitor telephone calls of prisoners who have not been convicted of a crime. It leaves intact the authority to monitor calls of convicted prisoners.

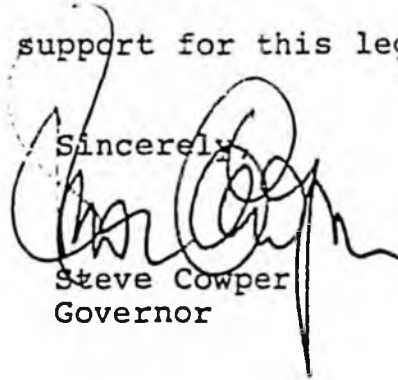
In 1983, the superior court in Cleary v. Smith signed an order granting reasonable access to telephones for all prisoners except those in punitive segregation. The order also prohibited monitoring telephone calls of pretrial detainees. In 1986, as a response to telephone abuses by a relatively small number of prisoners, the legislature passed AS 33.30.231 (sec. 6, ch. 88, SLA 1986). That statute precludes access to telephones, except to call an attorney, for inmates classified maximum custody or in segregation, and authorizes the monitoring of telephone calls of all prisoners. This bill would repeal those provisions in the statute which conflict with the court order. While the plaintiffs in Cleary have challenged the constitutionality of AS 33.30.231 in light of the 1983 court order, the state and Cleary plaintiffs have reached agreement on how to avoid this costly litigation and still afford adequate protection to the public from inmate telephone abuses.

The Department of Corrections will shortly be implementing a collect-call-only system (except to attorneys) for

prisoners, which will identify the caller as a prisoner and permit the person called an opportunity to refuse the call. This system, coupled with enactment of this bill, will protect the public from telephone abuses yet still allow the level of communication by prisoners envisioned in the 1983 court order.

I respectfully request your support for this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper  
Governor

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Department of Corrections  
 Title: "An Act relating to telephone access inside correctional facilities." BRU: \_\_\_\_\_  
 Sponsor: Rules Components: \_\_\_\_\_  
 Requestor: Governor

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director Phone: 465-3376  
 Division: Administrative Services Date: 12/27/89  
*Susan Humphrey-Barnett*  
 Approved by Commissioner: \_\_\_\_\_ Date: 12/27/89  
 Agency: Department of Corrections

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)



(7)

Date Referred: February 2, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/1/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 465

HOUSE BILL NO. 465 MONITOR PHONE CALLS OF PRISONERS

"An Act relating to telephone access and monitoring inside correctional facilities."

RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] have attached amendment(s) [ ] a new title
- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ X ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [ ] fiscal impact \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_
- [ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_
- [ X ] zero fiscal note(s) 2/2/90 Correction
- [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

\_\_\_\_\_

Mark Boyer w/amendment  
re: OMBUDSMAN

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SIGNING:  
(Check approp. column)

	Do Not PASS	No Rec	Amend
<u>[Signature]</u>		✓	
<u>Chris Davis</u>		✓	
<u>George Jones</u>			✓
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[Signature]  
Chairman's Signature

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

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

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HOUSE HESS

MARCH 1, 1990 8:37 AM

HB 465

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 465 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to telephone access and monitoring  
7 inside correctional facilities."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 33.30.231(a) is amended to read:

10 (a) A [EXCEPT AS PROVIDED IN (b) OF THIS SECTION, A] prisoner  
11 shall have reasonable access to a telephone except when access is  
12 suspended as punishment for conviction of a rule infraction or pending  
13 a hearing for a rule infraction involving telephone abuse. A sus-  
14 pension under this subsection must be reasonable in length and may not  
15 prohibit telephone communication between the prisoner and an attorney  
16 or between the prisoner and the office of the ombudsman.

17 \* Sec. 2. AS 33.30.231(c) is amended to read:

18 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to  
19 preserve the security and orderly administration of the correctional  
20 facility [INSTITUTION] and to protect the public, the commissioner may  
21 authorize the use of monitoring or recording equipment to listen to a  
22 telephone conversation of a prisoner incarcerated following conviction  
23 of a crime, if a warning is posted by the telephone informing the  
24 prisoner that a call may be monitored or recorded. A recording of a  
25 telephone call made under this subsection shall be kept confidential,  
26 and access to the recording and its contents is limited to persons who  
27 are conducting official investigations of wrongdoing or abuses by a  
28 prisoner and whose access to specific recordings has been authorized  
29 by the facility superintendent. A telephone call between an attorney

1 and a prisoner or between the office of the ombudsman and a prisoner  
2 may not be monitored or recorded except when authorized by a court.

3 \* Sec. 3. AS 33.30.231(b) is repealed.  
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