

HB

169

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 25, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-5-91

The JUDICIARY Committee considered:

HB 169

HOUSE BILL NO. 169

SEARCH WARRANTS BY FACSIMILE MACHINE

"An Act relating to the issuance of a search warrant by facsimile machine."

RECOMMENDATIONS:

be replaced with CSHB 169 (JUD)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note public safety, court system

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Donald Douley</i>					
<i>Mark Stanley</i>					
<i>James Martin</i>					
<i>Michael Miller</i>					
<i>Kerrin Paul Darnell</i>	<input checked="" type="checkbox"/>				
<i>Mark Stanley</i>					

*Donald Douley*  
CHAIRMAN'S SIGNATURE

BILL NO: HB 169

DATE: 3/5/91

TITLE: An act relating to the issuance of a search warrant by facsimile machine.

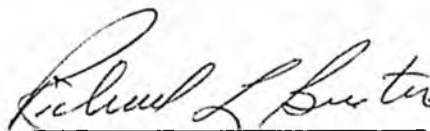
CONTACT: Gayle A. Horetski  
Deputy Commissioner  
465-4322

DEPARTMENT OF  
PUBLIC SAFETY

Existing law allows a judicial officer to issue a search warrant based on testimony received via phone. HB 169 amends AS 12.35.015 to make it clear that a search warrant issued by a judicial officer may be transmitted by facsimile machine ("fax") to the applicant.

The Department of Public Safety supports HB 169, which merely recognizes what has been occurring in some rural communities.

The Department recommends that proposed AS 12.35.015 be amended to make it clear that the application for a warrant could be faxed from the applicant to the judge, as well as authorizing the judge to fax the completed warrant to the applicant.



Richard L. Burton  
Commissioner

RECEIVED  
MARCH 11 1991  
COMMUNICATIONS SECTION

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**Bill No. CSHB 93 (HES)**

Revision Date: 03/20/91 Department Affected: Alaska Court System  
 Title: An Act eliminating a requirement that the BRU: Trial Courts  
court consider the findings...of a neutral mediator...child custody Components: \_\_\_\_\_  
 Sponsor: By the Judiciary Committee by request  
 Requestor: Judiciary COMPONENT SERIAL NO. 

000   000	000   768
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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

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

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Division: Alaska Court System Date: 03/20/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/20/91  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029


Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 8, 1991

**SUBJECT:** HB 169's Effect on Court Rules

**TO:** Representative Dave Donley  
Chair, House Judiciary Committee  
Attn: Laurie Otto

**FROM:** David R. Dierdorff   
Revisor of Statutes

You have asked whether the provisions of HB 169, relating to the use of facsimile machines (FAX) in connection with search warrants, amends a court rule. It is my opinion that it does not.

Under the state constitution, the supreme court is given the power to "make and promulgate rules governing practice and procedure in civil and criminal cases in all courts." Sec. 15, Art. IV, Alaska Constitution. The same provision grants the legislature the right, by supermajority, to change these rules.

The supreme court has adopted Rule of Criminal Procedure 38.1(b), which provides:

(b) The provisions of AS 12.35.012 shall govern the issuance of search warrants by telephone.

The growth of the use of FAX machines, which are a form of telephonic communication, led the court system to request a bill making amendments to AS 12.35.012 that would allow the use of FAX-transmitted affidavits in connection with applications for search warrants, and also authorize the issuance of search warrants by FAX machines. That bill is HB 169.

Given the language of Rule 38.1(b), and the fact that the amendments to AS 12.35.015 merely modify telephonic procedures to keep up with changing technology, it is my opinion that the bill does not have the effect of changing a court rule. Presumably, the court system could have achieved their goal by amending their rules to expressly provide that "telephone" includes "facsimile," but the amendments to AS 12.35.015, incorporated by reference within Rule 38.1, will provide better notice

Representative Dave Donley  
March 8, 1991  
Page 2

to law enforcement personnel and the judiciary of the proper use of this technology. The amendment in bill section 1 to AS 12.35.010 does not alter my opinion, because that amendment is only a conforming amendment.

In short, HB 169 does not amend a court rule, it amends a statute that the court system has, by rule, deferred to.

DRD:pl  
91-137.plm

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APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Wendell Sawyer</i>					
<i>Miss Gandy</i>					
<i>Carrie Martin</i>					
<i>Michael Miller</i>					
<i>Kevin Paul Durrell</i>					
<i>Mark Harley</i>					

\_\_\_\_\_  
CHAIRMAN'S SIGNATURE



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III  
Staff Counsel

303 K Street  
Anchorage, AK 99501  
(907) 264-8228

March 3, 1991

The Honorable Dave Donley  
Chairman, House Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Donley:

Thank you for scheduling House Bill 169, relating to the issuance of a search warrant by facsimile machine.

At the present time, AS 12.35.015 provides that search warrants may be issued upon sworn oral testimony communicated by telephone. A common example involves a trooper in a remote community without a judicial officer who must call a court in another community in order to apply for a search warrant.

Unfortunately, this statute was adopted before the common availability of facsimile machines. As a result, it requires the applicant to prepare a "duplicate original search warrant" and read it verbatim to the judicial officer at the distant location. The judicial officer enters what is read on an original search warrant. If the judicial officer makes changes in the course of the hearing, the applicant is directed to modify the duplicate original. The judicial officer then signs the original warrant, indicates the exact time of signing, and orally authorizes the applicant to sign the judicial officer's name and enter the same time on the duplicate original.

A search warrant is a minimum of four pages long. Frequently, additional pages will be added in order to list the specific property for which the applicant is searching. Reading this document is time consuming, prone to error, and often unnecessary given the technological changes that have taken place since the original statute was drafted.

The Honorable Dave Donley  
March 3, 1991  
Page 2

To remedy this situation, HB 169 provides that the judicial officer may simply transmit the original search warrant by facsimile machine to the applicant. The facsimile warrant then serves as an original. Time will be saved by all involved in the process, and the accuracy of the final product will be improved.

Thank you for your courtesy. Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III  
Staff Counsel

CSC:bh

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA  
AT \_\_\_\_\_

SEARCH WARRANT NO. \_\_\_\_\_

TO: Any Peace Officer

Sworn testimony having been given by \_\_\_\_\_  
\_\_\_\_\_

An affidavit having been sworn to before me by \_\_\_\_\_  
\_\_\_\_\_

Following my finding on the record that there is probable cause to believe that 1) the presentation of the applicant's affidavit or testimony personally before a judicial officer would result in delay in obtaining a search warrant and in executing the search; and 2) the delay might result in loss or destruction of the evidence subject to seizure, recorded sworn testimony was given by telephone by \_\_\_\_\_  
\_\_\_\_\_

I find probable cause to believe that

on the person of \_\_\_\_\_

on the premises known as \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ at \_\_\_\_\_, Alaska,  
there is now being concealed property, namely:

SEARCH WARRANT NO. \_\_\_\_\_

and that such property (see AS 12.35.020)

- 1. is evidence of the particular crime(s) of \_\_\_\_\_
- 2. tends to show that \_\_\_\_\_  
committed the particular crime(s) of \_\_\_\_\_
- 3. is stolen or embezzled property.
- 4. was used as a means of committing a crime.
- 5. is in the possession of a person who intends to use it as a means of committing a crime.
- 6. is one of the above types of property and is in the possession of \_\_\_\_\_, to whom \_\_\_\_\_ delivered it to conceal it.
- 7. is evidence of health and safety violations.

YOU ARE HEREBY COMMANDED to search the person or premises named for the property specified, serving this warrant, and if the property be found there, to seize it, holding it secure pending further order of the court, leaving a copy of this warrant, and all supporting affidavits, and a receipt of property taken. You shall also prepare a written inventory of any property seized as a result of the search pursuant to or in conjunction with the warrant. You shall make the inventory in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, if they are present, or in the presence of at least one credible person other than the warrant applicant or person from whose possession or premises said property is taken. You shall sign the inventory and return it and the warrant within 10 days after this date to any judge as required by law.

YOU SHALL SERVE THIS WARRANT:

- between the hours of 7:00 a.m. and 10:00 p.m.
- between the hours of \_\_\_\_\_ and \_\_\_\_\_.
- at any time of the day or night.



SEARCH WARRANT NO. \_\_\_\_\_

RECEIPT AND INVENTORY OF PROPERTY SEIZED  
(Continued)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RETURN

I received the attached search warrant on \_\_\_\_\_, 19\_\_\_\_, and have executed it as follows:

On \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ (a.m.)(p.m.), I searched (the person)(the premises) described in the warrant, and I left a copy of the warrant (with)(at) \_\_\_\_\_.  
(person warrant was left with or place warrant was left)

The above inventory of property taken pursuant to the warrant was made in the presence of \_\_\_\_\_ and of \_\_\_\_\_.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

\_\_\_\_\_  
Name and Title

Signed and sworn to before me on \_\_\_\_\_, 19\_\_\_\_,

(SEAL)

\_\_\_\_\_  
Judge

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

Bill No. HB 169

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to the issuance of BRU: Trial Courts  
search warrant by facsimile machine Components: \_\_\_\_\_  
 Sponsor: By Judiciary Committee by request  
 Requestor: Judiciary COMPONENT SERIAL NO. 

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

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GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

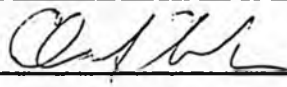
**POSITIONS:**

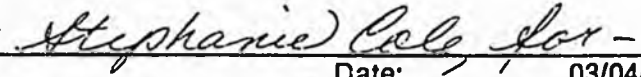
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

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

No fiscal impact.

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 Division: Alaska Court System Date: 03/04/91

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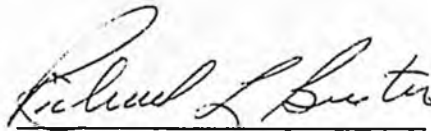
CONTACT: Gayle A. Horetski  
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