

CONF.

COMM.

HB

67

Received (S): _____

CONFERENCE COMMITTEE REPORT

DATE: April 26, 2000

MADAM PRESIDENT:
MR. SPEAKER:

The **CONFERENCE COMMITTEE** with limited powers of free conference considering:

CS FOR HOUSE BILL NO. 67(JUD) am

"An Act relating to release of certain persons alleged to have committed certain sexual offenses."

and

SENATE CS FOR CS FOR HOUSE BILL NO. 67(JUD)
(same title)

recommends that CCS HB 67

be adopted.

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s):

APPROVES PREVIOUS:

fiscal note(s) _____

fiscal note(s) Senate

zero fiscal note(s) _____

zero fiscal note(s) _____

House Conferees:

Senate Conferees:

Van Rokeberg
Representative Rokeberg, Chair

Robin L. Taylor
Senator Taylor, Chair

[Signature]
Representative Murkowski

Senator Donley
[Signature]
Senator Ellis

Ben Kerttula
Representative Kerttula

Return Conference Bill and attachments to the Chief Clerk's Office.

4/26/00

AMR- adopt as Ellis object for discussion
LM- adopt w/ new rec movement w/ ind rec
- Sen for col note

I-LS0197V
Luckhaupt
4/25/00

CONFERENCE CS FOR HOUSE BILL NO. 67

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Dyson, Croft, Harris, Halcro, Murkowski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to release of certain persons alleged to have committed certain
2 sexual offenses."

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

4 * Section 1. AS 12.30 is amended by adding a new section to read:

5 Sec. 12.30.029. Release in sexual abuse and sexual assault cases. (a)

6 Before ordering release before trial of a person charged with a crime under
7 AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458, the court shall consider the safety
8 of the alleged victim. The court may impose bail and any of the conditions authorized
9 under AS 12.30.020 and any other condition necessary to protect the alleged victim
10 and the public and to assure the appearance of the person in court.

11 (b) The court may impose any of the following conditions on a person charged
12 with an offense under AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458

13 (1) that the person have no contact with the alleged victim except as
14 specifically allowed by the court;

1 (2) that the person reside in a place where the person is not likely to
2 come into contact with the alleged victim of the offense; and

3 (3) if the person is on medication, that the person take the medication
4 as prescribed.

5 (c) Before a judicial officer releases a person charged with an offense under
6 AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458, the court shall

7 (1) assure that the alleged victim, or the alleged victim's parent or
8 guardian if the alleged victim is under 18 years of age, has been notified by a law
9 enforcement agency or the prosecuting attorney of the hearing where the release is
10 being considered, or a reasonable effort at notification has been made;

11 (2) solicit comments from the victim or the victim's parent or guardian
12 who is present and wishes to comment and consider those comments before making
13 a decision to release the person.

14 * Sec. 2. AS 12.30.040(a) is amended to read:

15 (a) A person who has been convicted of an offense and is awaiting sentence,
16 or who has filed an appeal, shall be treated in accordance with the provisions of
17 AS 12.30.020 unless the court has reason to believe that no one or more conditions of
18 release will reasonably assure the appearance of the person as required or prevent the
19 person from posing a danger to the victim, other persons, or the community. If that
20 determination is made, the person may be remanded to custody. This section does not
21 affect the right of a person appealing from a judgment of conviction from a district
22 court to the superior court to be released on bail pending appeal under Rule 603(b) of
23 the Rules of Appellate Procedure; however, the court shall consider the safety of the
24 victim, other persons, and the community before the person is released under the rule.
25 Before granting bail to a person convicted of an offense that is a crime under
26 AS 11.41.420, 11.41.425, 11.41.436, 11.41.438, or 11.41.450 - 11.41.458, the court
27 shall consider requiring the person to participate in an electronic monitoring
28 program as a condition of release.

29 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section
30 to read:

31 **APPLICABILITY.** This Act applies to criminal proceedings occurring on or after the

- 1 effective date of this Act regardless of whether the criminal offense occurred before, on, or
- 2 after the effective date of this Act.

1-LS0197V
Luckhaupt
4/25/00

CONFERENCE CS FOR HOUSE BILL NO. 67
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Dyson, Croft, Harris, Halcro, Murkowski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to release of certain persons alleged to have committed certain
2 sexual offenses."

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

4 * Section 1. AS 12.30 is amended by adding a new section to read:

5 Sec. 12.30.029. Release in sexual abuse and sexual assault cases. (a)
6 Before ordering release before trial of a person charged with a crime under
7 AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458, the court shall consider the safety
8 of the alleged victim. The court may impose bail and any of the conditions authorized
9 under AS 12.30.020 and any other condition necessary to protect the alleged victim
10 and the public and to assure the appearance of the person in court.

11 (b) The court may impose any of the following conditions on a person charged
12 with an offense under AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458

13 (1) that the person have no contact with the alleged victim except as
14 specifically allowed by the court;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(2) that the person reside in a place where the person is not likely to come into contact with the alleged victim of the offense; and

(3) if the person is on medication, that the person take the medication as prescribed.

(c) Before a judicial officer releases a person charged with an offense under AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458, the court shall

(1) assure that the alleged victim, or the alleged victim's parent or guardian if the alleged victim is under 18 years of age, has been notified by a law enforcement agency or the prosecuting attorney of the hearing where the release is being considered, or a reasonable effort at notification has been made;

(2) solicit comments from the victim or the victim's parent or guardian who is present and wishes to comment and consider those comments before making a decision to release the person.

* Sec. 2. AS 12.30.040(a) is amended to read:

(a) A person who has been convicted of an offense and is awaiting sentence, or who has filed an appeal, shall be treated in accordance with the provisions of AS 12.30.020 unless the court has reason to believe that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to the victim, other persons, or the community. If that determination is made, the person may be remanded to custody. This section does not affect the right of a person appealing from a judgment of conviction from a district court to the superior court to be released on bail pending appeal under Rule 603(b) of the Rules of Appellate Procedure; however, the court shall consider the safety of the victim, other persons, and the community before the person is released under the rule.

Before granting bail to a person convicted of an offense that is a crime under AS 11.41.420, 11.41.425, 11.41.436, 11.41.438, or 11.41.450 - 11.41.458, the court shall consider requiring the person to participate in an electronic monitoring program as a condition of release.

* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to criminal proceedings occurring on or after the

- 1 effective date of this Act regardless of whether the criminal offense occurred before, on, or
- 2 after the effective date of this Act.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



INTERIM:
716 WEST 4TH AVENUE, SUITE 840
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

MEMORANDUM

TO: Senator Robin Taylor, Chairman
Senate Conferees on HB 67

FROM: Representative Norman Rokeberg, Chairman
House Conferees on HB 67

DATE: April 24, 2000

RE: Conference Committee on HB 67

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

As you know, the House has failed to adopt the Senate-passed version of HB 67 due to some concern expressed over problems with the Senate amendments to this legislation. For your information, I am attaching a copy of Legislative Counsel's memorandum of April 19th addressing those concerns.

In reviewing the legislation again, the Legislative Counsel also found a problem with the "interaction" between two portions of Section 2 of the proposed legislation. A copy of that memorandum (dated April 20th) is also enclosed.

Also enclosed is a suggested amendment, LS1097/S.1, Luckhaupt, 4/21/00, which should address the Senate's concern for "teeth", eliminate the concern about a judge broadcasting intentions on a sentence, and also eliminate the "interaction" problem mentioned in the April 20th amendment.

To accomplish this amendment, I believe we would need to have limited powers of free conference. Attached is a letter requesting such limited powers of free conference. If you agree, please sign the form and contact Janet in my office at 4954.

If you have any suggestions, please do not hesitate to contact me.

cc: Representative Lisa Murkowski (w/enclosures)
Representative Beth Kerttula (w/enclosures)
Senator Dave Donley (w/enclosures)
Senator Johnny Ellis (w/enclosures)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 19, 2000

SUBJECT: SCS CSHB 67(JUD) - Bail for Sex Offenders (Work Order No. 21-LS0197S)

TO: Representative Norman Rokeberg
Attn: Janet Seitz

FROM: Gerald P. Luckhaupt *GL*
Legislative Counsel

You have asked if the new restrictions on bail before sentencing or pending appeal added to AS 12.30.040(b) by sec. 2 of the SCS(JUD) are constitutional. While application of the restrictions is awkward, is difficult to apply, and requires guesswork on the part of the sentencing judge, I do not believe the restrictions are unconstitutional. The questionable provision is that provided by new AS 12.30.040(b)(3)(A). That provision prohibits the release on bail of a person convicted of a sex offense

unless the court finds, if not released on bail, the person will remain in custody before

(A) sentencing for a greater period than the term of imprisonment the person is likely to be sentenced to serve. . . .

This provision requires a court to refuse bail before sentencing for a person convicted of a sex offense unless the court determines that the person will be in custody before sentencing for a period greater than the term of imprisonment the person is likely to be sentenced to receive. While such a procedure seems to put the cart before the horse, I don't believe it requires a finding that the procedure is unconstitutional. I don't believe it means that the court is required to unconstitutionally predetermine the sentence that will be imposed upon the defendant. Under our presumptive sentencing process

once the judge has ruled on the aggravating and mitigating factors, the parties know the range of sentences that might be imposed, and they can frame their sentencing arguments accordingly.

Reese v. State, 930 P.2d 1295 (Alaska App. 1996). Our presumptive sentencing process attempts to achieve geographical uniformity of sentences for similar offenses at the expense of judicial discretion. It does this by requiring judges to impose certain presumptive sentences unless certain aggravating or mitigating factors are found to exist which allow a court to adjust the sentence upward or downward. Therefore, the parties and the judge

Representative Norman Rokeberg
April 20, 2000
Page 2

"know" the range of sentences that might be imposed" upon the defendant. Similarly, if the parties have not provided notice of the existence of aggravating or mitigating factors the parties and judge know that the presumptive sentence should be imposed and if there is no presumptive sentence the parties and judge know it is likely that the defendant will receive a sentence that is less than the presumptive term for a second offense. Likewise, for misdemeanor sentences the judge and the parties know that the sentence for a class A misdemeanor may not exceed one year and the sentence for a class B misdemeanor may not exceed 90 days and so the judge and the parties know that it is likely that the person will receive either that sentence or something less. In cases where the judge has accepted a plea bargain that involves a binding sentence recommendation, the judge and the parties know the sentence that the defendant is likely to receive. None of these situations implies that the court has predetermined the sentence to be imposed nor belie any procedural unfairness to the defendant if the court notices of the sentence the defendant is likely to receive. In certain situations the court may not be able to determine the defendant's likely sentence, or determine that the defendant's presentence incarceration will exceed the likely sentence until further along in the presentencing process - again, I do not believe this mandates a finding of unconstitutionality.

While the procedure provided in the SCS(JUD) is unusual and could be considered unwise I do not believe that it is unconstitutional. Of course, a court could disagree.

GPL:pl:jr
00-151.plm

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 20, 2000

SUBJECT: SCS CSHB 67(JUD) - Bail for Sex Offenses (Work Order No. 21-LS0197\S)

TO: Representative Norman Rokeberg
Attn: Janet Seitz

FROM: Gerald P. Luckhaupt 
Legislative Counsel

As I related to Janet Seitz of your staff, I am concerned with the interaction between new AS 12.30.040(b)(3) and the existing paragraphs AS 12.30.040(b)(1) and (?).^{1/} New paragraph (3) denies bail before sentencing or pending appeal to defendants convicted of the listed sex offenses unless the defendant will serve before sentencing or pending appeal a greater period than the sentence the defendant is expected to, or actually did, receive. That list of sex offenses includes offenses that are denied bail under paragraphs (1) and (2). It appears to me that new paragraph (3) would apply to the offenses listed in (1)^{2/} and provide

^{1/}AS 12.30.040(b) provides:

(b) Notwithstanding the provisions of (a) of this section, a person may not be released on bail either before sentencing or pending appeal if the person has been convicted of an offense that is

- (1) an unclassified felony or a class A felony; or
- (2) a class B or class C felony if the person has been previously convicted of an offense in this state that is an unclassified felony, a class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 - 11.41.438 or of an offense in another jurisdiction with elements substantially similar to an offense of this state described in this paragraph.

^{2/}AS 11.41.410 and 11.41.434 are unclassified felonies. AS 12.30.040(b)(1) denies bail before sentence or pending appeal to unclassified felonies. New AS 12.30.040(b)(3) denies bail to persons convicted of AS 11.41.410 and 11.41.434 "unless . . . the person will remain in custody before" sentencing or pending appeal for a period greater than the sentence the person is likely to receive or has received.

Representative Norman Rokeberg

April 20, 2000

Page 2

an opportunity for bail where no opportunity existed before.^{3/} While I do not believe that new paragraph (3) will apply very often to persons convicted of unclassified sex offenses, the existence of this ambiguity is a cause for concern.

I have not come up with a foolproof way to remedy this concern as of yet, but a possible remedy might be to delete the word "unless" on page 2, line 25, and to insert language similar to the following: "; however, this paragraph does not apply if".

GPL:pl

00-152.plm

^{3/}I believe that it is less likely that new paragraph (3) could be construed to apply to paragraph (2). This belief is founded upon the existence in (2) of a condition that is not present in (3), although, a court could construe (3) to apply to (2) also.



Official Business

Alaska State Legislature

State Capitol
Juneau, AK 99801-1182

COPY

MEMORANDUM

TO: Senator Drue Pearce, Senate President
Representative Brian Porter, House Speaker

FROM: Senator Robin Taylor
Representative Norman Rokeberg

DATE: April 24, 2000

RE: Request for Limited Powers of Free Conference
House Bill 67 - BAIL HEARING FOR SEX OFFENDERS

The Conference Committee on HB 67 is unable to reach agreement on amendments, therefore, the committee requests limited powers of free conference on the following specific sections: Section 2 of the Senate CS for CS HB 67 (Judiciary).