

HB

135

FISCAL NOTE

No: 1

Bill Version: CSHE 135 (JUD)
 (H) Publish Date: 5/3/99

STATE OF ALASKA
 1999 LEGISLATIVE SESSION

Revision Date: 4/21/99
 Title: Police Use of Eavesdropping
 Sponsor: Representative Kott
 Requester: _____

Dept. Affected: Judiciary Committee
 BRU: _____
 Component: _____
 Component Serial No.: _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Cory W. Winchell, Judiciary Committee Phone 465-4990
 Hide

Phone _____

Date 4/21/99

SENATE COMMITTEE REPORT

DATE: 5/10/99

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 135(JUD) am

"An Act relating to use of eavesdropping and recording devices by peace officers."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>Keith Halford</i>	✓		
		<i>J. Ellis</i>	✓		
CHAIR: <i>Adrian T. Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

May 19, 1999

SUBJECT: Senate Action in Passing CSHB 135 (JUD) am

TO: Senator Robin Taylor
Attn: Sue

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

On May 18th, 1999, the Senate passed CSHB 135(JUD)am and returned the bill to the House. I have been informed that the Senate Judiciary Committee adopted an amendment to this bill; but the Committee inadvertently failed to request a SCS(JUD) to incorporate this amendment and the SCS(JUD) apparently was not read across on the Senate floor. The Senate subsequently passed the House CS(JUD) without anyone noticing that the House version of the bill had not been amended by the Senate. If the Senate now wishes to amend the bill to incorporate the amendment adopted by the Senate Judiciary Committee, the Senate must request the House to return CSHB 135(JUD)am to the Senate. If the House returns the bill to the Senate, the Senate would then be able to rescind their action in approving CSHB 135(JUD)am, return to second reading, and adopt the amendment that was offered before and adopted by the Senate Judiciary Committee.¹ The Senate would then pass the Senate amended bill out and return it to the House for concurrence in the Senate amendment.

If you have any questions, please contact me at your convenience.

GPL:lmb
99-090.lmb

¹Considering the lateness of hour, I recommend just adopting the amendment on the floor instead of trying to produce a SCS(JUD), having that read across, and then having the SCS(JUD) adopted on the floor.

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 135(JUD) am

1 Page 3, lines 22 - 23:

2 Delete "A peace officer monitoring a receiving unit under (a) of this section or any
3 other person intercepting an oral communication transmitted under (a) of this section,"

4 Insert "A peace officer, or other person, who receives by any means the transmission
5 of an oral communication that has been transmitted under (a) of this section"

6 Page 3, line 25:

7 Delete "intercepted"

8 Insert "transmitted"

*sect. amend. to correct Kerstula
amend in House.*

Sponsor Statement

HB 135 - An act relating to use of eavesdropping and recording devices by peace officers.

The initial contact in an undercover police investigation often does not qualify for a warrant to record the conversation for evidentiary purposes. Peace Officers now use hand signals or other visual communications to call in the backup officers when they believe their safety is at risk. Often the conversations are conducted out of sight of the backup officers and the safety of the undercover officer is compromised.

It is the intent of HB 135 to allow monitoring of undercover operations by the backup officer(s) for safety reasons, and protect the rights of the suspect. HB 135 would allow monitoring of the conversation with the following restrictions.

- The conversation must occur during an investigation or an arrest.
- It must be for the safety of the officer
- The conversation can not be recorded
- The backup officer(s) may not testify in a criminal proceeding involving a party to the oral communication about the contents of the conversation that was monitored.

HB 135 will improve peace officer safety and protect the rights of potential suspects. I urge your support for this legislation.

Alaska State Legislature

House of Representatives

COMMITTEES
JUDICIARY COMMITTEE, CHAIR
RULES
MILITARY & VETERANS AFFAIRS
UTILITY RESTRUCTURING
ETHICS



INTERIM:
10928 EAGLE RIVER RD., SUITE 141
EAGLE RIVER, AK 99577

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Memorandum

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Representative Pete Kott

SUBJECT: Request for Hearing, HB 135

DATE: May 10, 1999

I request that HB 135, "An Act relating to use of eavesdropping and recording devices by peace officers", be heard. Enclosed with this request is the following:

- Current version of the bill
- Sponsor statement
- Sectional Analysis

Additional information will be provided prior to the hearing. Teleconference requirements are not known at this time, but Anchorage has been a requirement at all previous hearings.

If there are any additional information is need contact Pat Harman x6841.

Representative Pete Kott

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Sectional Analysis
HB 135

Section 1. Allows an undercover peace officer and to wear a wire and to have their conversation monitored during an investigation without a warrant in the following conditions. The monitoring occurs during an investigation or arrest. The monitoring occurs for the safety of the peace officer. The conversation may not be recorded.

Section 2. When a peace officer monitors a conversation without a warrant, they may not testify in a criminal proceeding involving a party to the conversation.

Section 3. Holds harmless a series of circumstances and individuals that inadvertently monitor the conversation from the wire.

Sergeant David Hoffman

10235 Silvertip Cr.
Eager River, Alaska 99577
Home Phone 694-5758
Email pamdave@alaska.net

December 30, 1998

Representative Pete Kott
10928 Eagle River Road
Eagle Center Suite 141
Eagle River, Alaska 99577

Representative Kott,

Law Enforcement is in need of new legislation to further protect the safety of our officers. This legislation would impact law enforcement agencies of every size throughout the state. This legislation would focus exclusively on those officers that are engaged in undercover operations. I am seeking your help to allow undercover officers to be allowed to monitor their conversations for purposes of officer rescue. I know you have a law enforcement background but please allow me to provide a brief synopsis of why this legislation is needed.

In 1978, the Alaska Supreme Court handed down a decision (State of Alaska v. Theodore Glass) which mandated that private conversations could not be recorded for evidentiary purposes without first obtaining a warrant. Our State Constitution holds us to a higher standard and discounts the more common one party consent rule. As a result of this ruling undercover officers have to participate in un-monitored operations to be able to obtain probable cause to then apply for the Glass warrant.

I'm sure you'll agree that the dangers associated with law enforcement have changed since the Glass ruling twenty years ago. The availability of low cost drugs coupled with the willingness of criminals to resort to violence mandates we provide law enforcement with every possible tool to do their jobs safely.

I'm asking that you sponsor legislation that will allow law enforcement to monitor their conversations for officer safety concerns. It is important that you recognize the distinction between this request and the current standard set forth under Alaska v. Glass. I am not proposing anything that in any way tampers with the standard for recording for evidentiary purposes. I just want the option to be able to monitor, not record, for purposes of officer safety.

I have the full support of my Chief, Duane Udland. I also have a verbal commitment from Rep. Brian Porter that he will act as a co-sponsor. I have made contacts in the District Attorney's office and have received favorable feedback. This project is important to me and I hope you will allow me to participate in the process should you find it acceptable.

While researching this project I found that the State of New Hampshire has previously addressed this issue and found that monitoring for purposes of officer rescue was not equivalent to monitoring for the purpose of introduction as evidence at trial. I have provided your aid with this information as requested by him.

Thank you for your time and I hope we can meet soon to discuss this much needed legislation.

Sincerely,

David Hoffman