

HB

1 1 4

23-LS0564H
Luckhaupt
3/19/03

CS FOR HOUSE BILL NO. 114(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the issuance of a search warrant."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 12.35.015(a) is amended to read:

4 (a) A judicial officer may issue a search warrant upon the sworn oral
5 testimony of a person communicated by telephone or other appropriate means, or
6 sworn affidavit transmitted by facsimile machine, if the judicial officer finds that there
7 is probable cause to believe that

8 (1) the presentation of the applicant's affidavit or testimony personally
9 before the judicial officer would result in a delay in obtaining or executing a search
10 warrant [AND IN EXECUTING THE SEARCH]; and

11 (2) the delay might result in loss or destruction of the evidence subject
12 to seizure or might interfere with an ongoing investigation.

23-LS0564\D
Luckhaupt
3/14/03

CS FOR HOUSE BILL NO. 114(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
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Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST

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5 testimony of a person communicated by telephone or other appropriate means, or
6 sworn affidavit transmitted by facsimile machine, if the judicial officer finds that there
7 is probable cause to believe that

8 (1) the presentation of the applicant's [AFFIDAVIT OR] testimony
9 personally before the judicial officer would result in ^adelay in obtaining or executing a
10 search warrant [**AND IN EXECUTING THE SEARCH**]; and

11 (2) the delay might result in loss or destruction of the evidence subject
12 to seizure or might interfere with an ongoing investigation.

put back in

HOUSE BILL NO. 114

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST

Introduced: 2/19/03

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the issuance of a search warrant."

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

3 * Section 1. AS 12.35.015(a) is amended to read:

4 (a) A judicial officer may issue a search warrant upon the sworn [ORAL
5 TESTIMONY OF A PERSON COMMUNICATED BY TELEPHONE OR OTHER
6 APPROPRIATE MEANS, OR SWORN] affidavit transmitted by facsimile machine.

7 A judicial officer may issue a search warrant upon the sworn oral testimony of a
8 person communicated by telephone or other appropriate means [,] if the judicial
9 officer finds that there is probable cause to believe that

10 (1) the presentation of the applicant's [AFFIDAVIT OR] testimony
11 personally before the judicial officer would result in a significant delay in obtaining
12 or executing a search warrant [AND IN EXECUTING THE SEARCH]; and

13 (2) the delay might result in loss or destruction of the evidence subject
14 to seizure or might interfere with an ongoing investigation.

Keep in
replace w/ comma
remove

AMENDMENT #1

OFFERED IN THE HOUSE

BY REP. GRUENBERG

TO: HB 114

Page 1, line 11:

Following first "in"

Delete "a significant"



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

Doug Wooliver
Administrative Attorney

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

February 25, 2003

The Honorable Lesil McGuire
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative McGuire:

The Alaska Court System respectfully requests that you schedule HB 114 for a hearing before the House Judiciary Committee at your earliest convenience.

House Bill 114 has been introduced at the request of the Supreme Court of the State of Alaska to fix a small but time-consuming and costly problem with the way search warrants are requested.

In order for a peace officer to obtain a search warrant, he or she must present evidence sufficient to convince a judge that probable cause exists to believe that the item or place to be searched is in some way related to or evidence of a crime. That evidence comes in the form of either a written affidavit or oral testimony. Providing such evidence is not a problem if the officer and the judge are in the same community. The officer may either drop off a signed affidavit or personally testify before the judge. The situation is different when the officer and the judge are not in the same community. In those cases the testimony must come in either through a faxed affidavit, telephonic testimony or through a third person.

Current law (AS 12.35.015(a)) restricts faxed affidavits and telephonic testimony to only those situations where the evidence to be searched is in danger of being lost or destroyed. In all other cases the officer must call another peace officer in the community where the judge is located, tell him or her the facts and have that officer either fill out and sign an affidavit or appear personally before the judge. If no officer is available for this errand then the one in need of the search warrant must either wait until someone is available or, as is often the case, fly into the community where the judge is located and personally petition for the warrant.

A common scenario where this problem arises is when a village police officer seizes what he or she believes to be contraband liquor. The officer needs a search warrant to open the package but because he or she has seized the item to be searched it is not in

danger of being lost or destroyed. Because of this the officer is precluded from applying for a search warrant telephonically or by fax. This frequently means that he or she must fly to the nearest community that has a judicial officer in order to obtain the warrant. This adds unnecessary expense and delay to the process.

The change requested by the supreme court would allow a faxed affidavit in support of a search warrant to be accepted without restriction, just as if it had been hand-delivered to the court. It would also expand the circumstances under which the court may accept telephonic testimony to include circumstances where the telephonic testimony would avoid a significant delay in obtaining the warrant and that delay would interfere with an ongoing investigation.

These minor changes to the search warrant statute should facilitate law enforcement in many communities around the state.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Wooliver", written over a horizontal line.

Doug Wooliver
Administrative Attorney
Alaska Court System

ALASKA COURT SYSTEM

SPONSOR STATEMENT HOUSE BILL 114

House Bill 114 has been introduced at the request of the Supreme Court of the State of Alaska to fix a small but time-consuming and costly problem with the way search warrants are requested.

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These minor changes to the search warrant statute should facilitate law enforcement in many communities around the state. Thank you for your consideration of this request.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 114
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Issuance of Search Warrants BRU Alaska Court System
Component Trial Courts
Sponsor House Rules by Request
Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
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						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Court System does not anticipate any fiscal impact by the passage of HB 114.

Prepared by: Doug Wooliver, Administrative Attorney Phone _____
Division: Alaska Court System Date/Time 3/4/03 3:01 PM
Approved by: Stephanie Cole, Administrative Director Date 3/4/03
Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB114 DOC 2 28
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Department of Corrections
Title Issuance of Search Warrants BRU Administration & Operations
Component _____
Sponsor House Rules Committee
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact to the Department of Corrections.

Prepared by: Jerry D. Burnett, Director
Division Administrative Services
Approved by: Portia C.K. Parker, Assistant Commissioner
Agency Department of Corrections

Phone 465-3339
Date/Time 2/28/03 3:30 PM
Date 2/28/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 114
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the issuance of a search BRU Criminal Division
warrant>' Component All
 Sponsor House Rules Committee by Request
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
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						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows the issuance of a search warrant upon sworn oral testimony by telephone if waiting for in-person testimony would result in a significant delay in obtaining or executing the search warrant and the delay might interfere with an ongoing investigation.

Passage of this legislation would have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time: 3/4/03 2:32 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date: 3/4/2003
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 114
 () Publish Date: _____

Revision Date/Time (Note if correction): N/A Dept. Affected: Public Safety
 Title An Act relating to the issuance of a BRU AST Detachments
search warrant. Component AST Detachments
 Sponsor House Rules
 Requester Governor Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
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						
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1004 GF						
1005 GF/Program Receipts						
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Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Prepared by: Lieutenant Matthew Leveque Phone 907 269-0390
 Division Alaska State Troopers Date/Time 3/4/03 11:20 AM
 Approved by: William Tandeske, Commissioner Date 3/4/2003
 Agency Department of Public Safety