SB

170

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 04/02/04

REPORTED OUT
APR 1 6 2004
SENATE FINANCE COMMITEE

FURTHER:

DATE TURNED IN TO OFFICE: 16th April 2004

Finance Committee considered SENATE BILL NO. 170

SB 170 CRIMINAL LAW/SENTENCING/ PROBATION/PAROLE

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[✓] adopt **previous** _____ CS SB 170 (JUD)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#
Admin	4/8/04	30.8			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Corrections	3/10/04	3.4			#3

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	✓			
			✓	
			✓	
	✓			
	✓			
COCHAIR:				
COCHAIR:				

REPORTED OUT

APR 1 6 2004

SENATE FINANCE COMMITEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSSB 170(JUD)
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An Act relating to murder in the second degree,...
BRU: Legal and Advocacy Service
Component: Public Defender Agency
Sponsor: Rules Committee
Requester: Senate Finance
Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	74.5	74.5	74.5	74.5	74.5	74.5
Travel	2.1	2.1	2.1	2.1	2.1	2.1
Contractual	6.5	6.5	6.5	6.5	6.5	6.5
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	90.8	84.8	84.8	84.8	84.8	84.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF	90.8	84.8	84.8	84.8	84.8	84.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	90.8	84.8	84.8	84.8	84.8	84.8

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

The Public Defender's operations will be fiscally affected by the first aspect of this proposed legislation, Sections 1-11, should it become law. If established villages and municipalities adopt lower amounts of alcohol for local option purposes than established in Title 4 that would increase the number of prosecutions per year, depending upon the number of local option areas that adopt lower amounts. The Ageny cannot predict how many local option areas will lower the amounts, so the fiscal impact cannot be quantified. Clarifying the applicable local option law in overlapping areas may have a fiscal impact, but it is not possible to predict the impact with any accuracy. It is unknown how many cases involve importation or possession from overlapping areas.Expanding the circumstances under which the offense of furnishing alcohol to a minor is a class C felony instead of a class A misdemeanor, to include violations that occur

See attached page.

Prepared by: Linda K. Wilson, Deputy Director
Phone (907)-334-4416
Division: Public Defender Agency
Date/Time 4/8/04 9:55 AM
Approved by: Kevin Jardell, Assistant Commissioner
Date 4/8/2004
Agency: Department of Administration

ANALYSIS CONTINUATION

within the boundaries of a local option area will have a fiscal impact on the operations of the Agency. Increasing what was a misdemeanor to a felony increases the workload of the Agency. Felonies are more difficult cases and often require more work, investigation, and resources to defend, especially in rural areas, that would be most impacted by this change. Allowing the forfeiture of money and other items used in financial transactions derived from prohibited activity violative of local option laws, will have a fiscal impact on the operations of the Agency, but more importantly Section 11 requiring forfeiture of aircraft, and vehicles or watercraft in certain circumstances, will surely have a fiscal impact, because there will be more hearings on the issue of forfeiture involving potential claims by lienholders, owners, and others with an interest in the property subject to forfeiture.

Section 14 expands the crime of assault in the third degree, a class C felony, to include when a person with criminal negligence causes serious physical injury by means of a dangerous instrument. This conduct is currently an A misdemeanor. Expanding the crime of third degree assault, a C felony, to include causing serious physical injury with criminal negligence, by means of a dangerous instrument, most likely a vehicle, will certainly have a fiscal impact on Agency operations. Increasing what is now a misdemeanor to a felony level offense increases the workload of the Agency. Felonies are more difficult cases that require more resources to defend. It cannot be accurately predicted however what the increased number of cases from misdemeanor to felony will be, that are the target of this section.

Section 17 (with conforming Sections 12 and 33(a)) seeks to increase the penalties for and create a new criminal offense for violations of a court-ordered third party custodian's duty. Changing what is now a contempt violation to a charge for a class A or B misdemeanor with significantly stiffer penalties will result in less clients getting out of jail on bail, which will increase the need to more quickly prepare a case for trial and then go to trial more quickly for these clients to ensure their right to a speedy trial. It will also increase the Public Defender Agency's caseloads because it may be appointed to represent many of these custodians charged with these misdemeanors for failing to immediately report a violation.

Section 18 will have a fiscal affect on the Agency operations because more cases will be prosecuted where self-defense used to be legitimately raised, but now will be disallowed, however, it is impossible to accurately predict how many of these new prosecutions will result.

The Agency will have increased investigative costs as a result of these changes, primarily in the Anchorage office that handles the most cases.

Sections 22, 23, 30-31, and 33(b) seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate or restrict the court's ability to determine the appropriate amount of consecutive time to be imposed for certain crimes. This change in the sentencing statutes will likely result in the inability to resolve cases short of trial, when the case is one in which conviction of more than one count would otherwise have been an appropriate resolution, now would be forced to go to trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

Sections 25-29 concern drunk driving and refusal laws under Title 28. It broadens felony DUI and refusal to include a person driving under the influence who has any prior conviction for felony DUI or refusal. Making any subsequent DUI or refusal a felony if there is a prior conviction for felony DUI or refusal will impact the operations of the agency, probably not immediately, but in the future. It is unknown how many people convicted of felony DUI or refusal will allegedly reoffend after 10 years has elapsed. Since the enactment of felony DUI and refusal in 1996, the number of these cases handled by the Agency has increased every year, In FY 99 the Agency handled appoximately 125 felony DUI and refusals, but in FY02 it handled over 300. Felony prosecutions are more difficult cases and require more work, investigation, and resources to defend, especially in rural areas.

For all of the above reasons, one full time investigator is required in the Anchorage office to meet the fiscal challenges this bill will have on the operations of the Agency.

REPORTED OUT

APR 1 6 2004

SENATE FINANCE COMMITEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSB 170(JUD)
(S) Publish Date: 4/2/04

Revision Date/Time (Note if correction):
Dept. Affected: Corrections
Title: Criminal Procedures, Sentencing & Related Issues.
RDU: Administration & Operations
Component: Institution Director's Office
Sponsor: Rules Committee
Requester: Governor
Component No.: 1381

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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	3.4	54.6	98.9	174.2	195.0	225.7
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	3.4	54.6	98.9	174.2	195.0	225.7
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

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	3.4	54.6	98.9	174.2	195.0	225.7
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	3.4	54.6	98.9	174.2	195.0	225.7

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 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)*

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY04 cost of care of $113.69. Sentences timeframe is estimated as beginning 7/1/2004.

See attached:

Prepared by: Jerry D. Burnett, Director
Phone (907) 465-3339
Division: Administrative Services
Date/Time 3/10/04 7:30 AM
Approved by: Portia C.K. Parker, Deputy Commissioner
Date 3/10/2004
Agency: Department of Corrections

(Revised 9/2003 OMB)

COMMITTEE COPY

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSSB 170(JUD)

ANALYSIS CONTINUATION

For years past FY 2010, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2010. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

FRANK H. MURKOWSKI, GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Delivery: 123 4th Street, Ste 717
Juneau, AK 99801
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April 13, 2004

Hon. Gary Wilken, Co-Chair
Senate Finance Committee
State Capitol, Room 518
Juneau, AK 99801-1182

Re: CSSB 170 (JUD)

Dear Senator Wilken:

Here are the highlights for CSSB 170 (JUD). I am also attaching a three-page sectional summary and letters of support from Mothers Against Drunk Driving (MADD), Alaska Network on Domestic Violence and Sexual Assault, Alaska Association of Police Chiefs, and Lisa Nelson.

Highlights of Governor's 2004 Crime Bill (CSSB 170 (JUD))

MAKES CRIMINALS THINK TWICE
BEFORE COMMITTING DANGEROUS OFFENSES

1. Adopts consecutive sentencing procedures so that some consecutive term is imposed for each victim or each conviction of a serious crime.

2. Disallows self-defense if the state proves a deadly weapon was possessed to further the felony criminal objectives of a gang, or to buy or sell felony amounts of illegal drugs.

3. Expands felony-murder law so offenders committing dangerous crimes can be charged with second-degree murder if their accomplice is killed.

4. Makes it a misdemeanor for a court-appointed custodian to knowingly fail to report that the defendant released to his custody has violated court-imposed conditions.

BOOTLEGGING: HELPS LOCAL OPTION COMMUNITIES

5. Allows communities to adopt lower limits of alcohol possession and importation as part of the local option system; closes a local option loophole.

6. Increases penalty to a class C felony for furnishing alcohol to minors in local option areas, and for sending large amounts of alcohol to local option areas.

7. Allows forfeiture of cash seized in bootlegging offenses. Mandates forfeiture of certain vehicles used in bootlegging, unless the vehicle is the sole means of transportation of a family in rural Alaska.

PROTECTS CHILDREN FROM JUVENILE OFFENDERS

8. Increases penalty for sexual abuse of young children by teenagers.

9. Allows greater disclosure of information about juvenile offenders.

IMPROVES DRUNK DRIVING LAWS

10. Once a person has committed felony drunk driving (three times in 10 years), all additional drunk driving would be treated as a felony.

11. Increases penalty to a class C felony for criminally negligent offenses that cause serious physical injury with a dangerous instrument, which includes a motor vehicle.

12. Prohibits the "big gulp" defense in drunk driving cases that encourages drinking drivers to have "one for the road."

If you have any questions, please feel free to contact me,

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: David Marquez
Assistant Attorney General

Attachments

CS for SENATE BILL 170(JUD)

(April 5, 2004)

Sectional Summary

Sections 1 - 4 allow communities to adopt, as part of a local option, lower amounts of alcohol that may be possessed or imported into the community than may currently be possessed or imported, and still presumed to be for personal use rather than for sale. Certain communities have already adopted lower limits by ordinance. If it is part of a local option, however, state law enforcement authorities can help communities enforce these lower limits.

Sections 5 and 6 close a local option loophole. Under current law a local option limiting alcohol applies in a five-mile radius around the center of the village. This circle helps protect against bootleggers on skiffs and snowmachines from bringing alcohol to sell in local option villages. If villages are close together, the areas of protection may overlap, and a loophole in the law essentially wipes away the protective circle for both villages, and limits alcohol only in the village itself. These sections provide that the least restrictive local option applies in the overlapping areas.

Section 7 raises the penalty for furnishing alcohol to a person under 21 years of age from a class A misdemeanor to a class C felony, if the offense occurs in a village or municipality that has adopted a local option.

Sections 8 - 11 improve the law for forfeiture of property used in bootlegging in several ways. First, **Section 8** allows for the forfeiture of money used in bootlegging offenses. Second, **Sections 9 and 10** strengthen forfeiture law for vehicles, watercraft, and aircraft used to bootleg alcohol. It adopts the standards required in current law under *State v. Rice,* 626 P.2d 104 (Alaska 1981), for innocent owners to protect their interest in property subject to forfeiture for bootlegging. Third, **Section 11** makes it mandatory that means of transportation used in bootlegging be forfeited if (a) the bootlegger has a conviction for a violent felony or is on felony probation or parole; (b) the bootlegger has a prior bootlegging conviction; or (c) the alcohol transported was at least twice the amount presumed to be possessed for sale (24 liters of hard liquor, 48 liters of wine, or 24 gallons of beer). A court is not required to forfeit a car, truck, snowmachine, fourwheeler, or watercraft if it is the only means of transportation for a family in a village, and if the members of the family were innocent or could not prevent the bootlegging. **Section 11** also allows the state to share the proceeds from forfeited property with municipal law enforcement agencies that participate in the arrest or conviction of a bootlegger.

Section 12 is a conforming amendment to the change described in **Section 17.**

Section 13 expands the felony-murder rule so that an offender who commits a dangerous crime can be charged with second-degree murder if an accomplice is killed. The current

felony-murder rule allows an offender to be charged with second-degree murder if a person, such as a bystander, is killed during the commission of the crime, even if the offender did not directly cause the death. The purpose of the felony-murder rule is to discourage serious crimes. It will be more effective if it also applies to the death of a participant in the crime.

Section 14 increases the penalty from a class A misdemeanor to a class C felony for criminally negligent conduct that causes serious physical injury with a dangerous instrument. One example of this conduct is a person who drives partly impaired (but not enough to be DUI), drives in a dangerous manner, and causes serious injury to another person.

Sections 15 - 16 increase the penalty for sexual abuse by penetration of very young children by teenagers from a class A misdemeanor to a class C felony.

Section 17 adopts a new crime - that of violating a person's duty as a third party custodian. It applies to a person who agrees to be a third party custodian, but does not report to authorities if the person in custody violates release conditions. It is either a class A or class B misdemeanor, depending on the crime with which the person released is charged.

Section 18 disallows self-defense if the force applied resulted from use of a deadly weapon, and the state proves that the defendant was furthering his own felony criminal objectives or those of a gang, or was buying or selling a felony amount of illegal drugs.

Sections 19 - 21 and 24 adopt a procedure to determine if a witness has a valid Fifth Amendment privilege against self-incrimination. An attorney is appointed for the witness, and the court makes the determination in a closed proceeding outside the presence of the prosecution. Under these sections, the prosecution is provided no information needed to decide whether to grant immunity. These provisions essentially make no change to existing procedures.

Sections 22 - 23 and 30 - 31 give direction to courts in sentencing a defendant for more than one crime. Current law appears to require consecutive sentences, but was not interpreted that way because of bad drafting. This clarifies that for most crimes a court may impose sentences that are concurrent or partially concurrent. However, for homicides, kidnapping, and serious sex offenses, this section specifies the minimum amount of consecutive time that must be imposed. For example, for two counts of first-degree murder, the court must require the mandatory minimum term of the second offense to be served consecutively. For manslaughter and kidnapping, at least the period of the presumptive term of the second offense must be served consecutively.

Sections 25, 27, and 29 disallow the "big gulp" defense in drunk driving cases. It reverses a recent court decision, *Conrad v. State,* 60 P.3d 701 (Alaska App. 2002), that allows a driver to claim that he drank alcohol just before driving, and was able to drive before the alcohol affected his perceptions. This case is a major step back in the state's efforts to reduce drunk driving, and requires expert testimony about alcohol assimilation rates and other issues confusing to jurors. The legislature, in prohibiting driving with .08 blood alcohol, as

determined by a chemical test taken within four hours of driving, intended to avoid this battle of chemical experts.

Sections 26 and 28 provide that once a person has been convicted of felony drunk driving or felony refusal to submit to a chemical test, any subsequent drunk driving or refusal offense will also be a felony.

Section 32 allows for greater disclosure to the public by a state or municipal agency of information about juvenile sex offenders, if necessary to protect children or vulnerable adults.

Section 33 provides conforming repealers.

Sections 34 and 35 include applicability and effective date provisions.

THE
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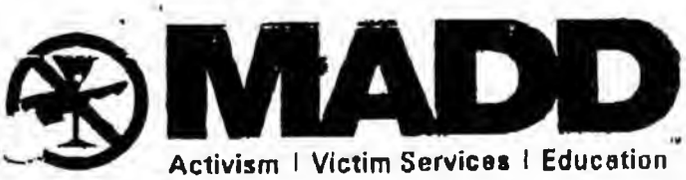

Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

Mothers Against Drunk Driving (MADD) supports CSSB 170 for House Bill 244.

MADD supports consecutive jail time for each death in a drunk driving crash in order for restorative justice to take place within our communities.

As a victim in the State v. Glaser case, I cannot begin to explain the unnecessary bitterness and frustration our families struggle with because of the court decision which refused to consider the multiple deaths in the drunk driving tragedy. Currently in Alaska, a loved one's life is less valuable than a stolen automobile in a felony case; this sends a dangerous message out to all Alaskans. Each life torn from us by drunk driving is certainly worth taking into individual consideration; to do otherwise would create additional heartache and trauma for victims of this violent crime.

MADD also supports the right for communities to adopt lower limits of alcohol possession and importation in order to increase the health and safety of their people.

MADD supports stricter drunk driving sanctions for high risk drivers. Habitual drunk drivers who have repeatedly chosen to endanger themselves and everyone else who shares their road system must be held accountable for their crimes.

About one-third of all drivers arrested or convicted of driving under the influence are repeat offenders. These drivers are 40% more likely to be involved in a fatal crash than those without prior DUIs.

MADD supports increased penalties for those whose choice to drink and drive results in the serious injury of an innocent victim or victims.

People who drink and drive are unable to determine if they are sober before arriving at their destination. If a person chooses to drink and drive then that person has committed a crime and should be held accountable for his/her actions.

MADD supports the recommended changes in CSSB 170 for House Bill224 as a way of deterring further drunk driving tragedies and improving Alaska's restorative justice system.

Sincerely,

Cindy Cashen

Cindy Cashen
Executive Director

ALASKA NETWORK ON
DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, Rm 209
Juneau, Alaska 99801

(907) 586-3650 ph
(907) 463-4493 fx

SB170/HB244
March 2004

Please accept this memo as a letter of support for the Governor's crime bill.

The Network particularly appreciates the administration's stance on holding perpetrators accountable for each crime they've committed by requiring consecutive sentencing for multiple counts of particularly heinous crimes, including sexual assault. The longer sex offenders can be removed from the community the safer we all are. Consecutive sentences also provide some sense of approximate justice to each victim involved, that at least the perpetrator is being required to pay something, for the crime committed against her/him.

The Network supports increasing the penalty from a class A misdemeanor to a class C felony for the crime of sexual abuse when an older minor penetrates a very young minor. Recognizing that minors who commit sexual abuse crimes are sometimes victims themselves, it is still important that the crime carry a penalty severe enough that if the minor chooses to perpetrate a sexual assault as an adult, the previous conduct can be examined.

The Network also supports releasing documents concerning adjudication of a sexual offense to protect the safety of a child or vulnerable adult. Balancing the needs of families to protect children and vulnerable adults and the juvenile offender's right to confidentiality is something we believe can be achieved through the regulation process when the department begins to implement procedures to allow for the release of information.

Alaska Association of Chiefs of Police

Via: US Mail

February 24, 2004

Mr. Dean Guaneli
Chief Assistant Attorney General
PO Box 110300
Juneau, Alaska 99801

RE: Governor's 2004 Crime Bill

Dear Dean,

The Alaska Association of Chiefs of Police would like to offer our support for the Governors 2004 Crime Bill. I believe this bill offers many potential solutions to problems we as Law Enforcement Officers and you as Prosecutors face day on a daily basis.

As an Alaskan Law Enforcement Officer for over 30 years I have watch our criminal justice system come from areas that were weak to a much stronger practice today. However there is still much to do to assure the safety of the people we serve as well as reducing the occurrence of serious and dangerous offenses. This bill assists those communities that choose to reduce the use of alcohol; it improves our drunken driving laws and helps in the protection of children from juvenile offenders. These are important areas that need to be address and I believe the Governor has made a major step in the right direction.

We support this bill and offer any assistance we can provide. Please contact me if you have any questions or concerns.

Sincerely,

Thomas Lee Clemons
Chief of Police

(907) 224-3338 P.O. Box 167 Seward, AK 99664

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

March 9, 2004

The Honorable Lesil McGuire, Representative
State Capitol
Juneau, Ak 99801-1182

Re: HB 244, Governor's 2004 Crime Bill

Dear Representative McGuire:

I am writing to voice my support of the Governor's 2004 Crime Bill, which I understand, will be considered as a committee substitute for HB 244. Although I support all the provisions in the Governor's new bill, there are some that are of particular interest to me because they are important in protecting children from abuse.

For over 20 years I have been working in Alaska as a prosecutor of adult sex offenders, as a prosecutor of juvenile offenders, and as a line attorney and supervisor of prosecutors of child protection (CINA) cases, many of which involve sexual abuse of children, as well as other types of abuse and neglect. I have also served on two Governor's Child Protection Task Forces and the Balloon Project Steering Committee. I continue to serve on the Juvenile Justice Working Group, the CINA and Juvenile Delinquency Court Rules Committee, the CINA Court Improvement Project and the Management Team of Alaska CARES (Anchorage's Child Advocacy Center). And I currently serve as chair of the Federal Children's Justice Act Task Force. Finally, I received the 2003 Commissioner's Award from the U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, for my "outstanding leadership and service in the prevention of child abuse and neglect." This was followed by a citation in my honor issued by the Alaska Legislature and sponsored by the Honorable Fred Dyson.

Because of my lengthy and broad experience in several aspects of the fight against child abuse and neglect articulated above, I would like to add my support and comments to four particular provisions of the Governor's crime bill that deal directly with this effort.

First, the provisions giving direction to courts in imposing sentences for defendants convicted of more than one crime will help protect children from abusers. Current laws for sentencing offenders convicted of multiple offenses are confusing and unevenly applied. As I know you are aware, child abusers often victimize more than one child, and more than one time, and therefore these new sentencing provisions are of great interest to me.

Next, because I am well aware that sexual offenders are not always adults, I support the provisions that would increase the seriousness of abuse of young children by teenagers. A 14-year-old that sexually abuses a five- year- old by penetration should be adjudicated of a felony, not a misdemeanor. Even though the incarceration/treatment of these young offenders would not drastically change, increasing the class of the offense would send the correct message to these offenders about the seriousness of the offense. Currently, to a juvenile, it appears more serious to steal someone's laptop (a felony) than to engage in full sexual penetration with a kindergartner (a misdemeanor).

Thirdly, I support the provision that would allow greater information to be released about juvenile sex offenders. A parent should be able to find out if a potential babysitter for their children has been adjudicated in the juvenile justice system for a sex offense. As a mother of two young children, I know I would be horrified if I unwittingly hired a babysitter that perpetrated on one or both of my children. My children could be scarred for life.

Finally, the provisions giving local communities authority to adopt stronger controls over alcohol in local option areas, and related provisions to curb bootlegging, will contribute to a better environment for children in rural areas. Alcohol is almost always involved in incidents of child sexual abuse, physical abuse and neglect. If perpetrators who are prone to abusing children when they have consumed too much alcohol were not allowed access to it, I guarantee the rate of child abuse and neglect would plummet.

Thank you for hearing this legislation. I believe it will greatly assist our efforts to make Alaska a safer place to be a child.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: Lisa B. Nelson
Assistant Attorney General

LBN:dal

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 2, 2004

SUBJECT: Of Authorized Employees and CSSB 170(JUD)
(Work Order No. 23-GS1024\Q)

TO: Senator Ralph Seekins
Attn: Brian Hove

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the final CS(JUD) you requested. I have one comment. In sec. 32 of the bill we create a new AS 47.12.310(k) and allow state and municipal agencies and their "authorized employees" to release certain information. In AS 47.12.310(b) state and municipal agencies and their "employees," not "authorized employees," are required to release certain information. By inserting "authorized employees" instead of "employees" in this new subsection it appears that "unauthorized employees" will now be allowed to disclose information under AS 47.12.310(b) since that subsection allows "employees" to release information. In my opinion the inclusion of "authorized" in new (k) is not needed and causes more trouble than any possible comfort it could provide.

GPL:med
04-368.med

Enclosure

COMMITTEE COPY

SB 170

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April 3, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making changes to criminal procedures that would allow for more straightforward and fair prosecution of crime in Alaska. Additionally, the bill would improve the criminal law regarding sentences.

The bill proposes the following changes in criminal procedures.

Deterring Those Who Take Deadly Weapons to a Fight. We have to cut down on the violence on our streets. There are too many drug dealers, gang members, and violent people who bring guns to situations where they know they will get into fights; they then claim self-defense when they use the gun. Too many innocent people die, and prosecution is too difficult. We need to put a stop to this. If you bring a gun to a fight, you should be responsible for the consequences. Self-defense should not excuse a killing if the defendant brought a deadly weapon to a confrontation with reason to believe that combat would result. The Alaska Supreme Court long ago declared in *Bangs v. State,* 608 P.2d 1 (Alaska 1980), that a person who brings a deadly weapon to a confrontation, having reason to know that the encounter will likely result in combat, should not be entitled to self-defense protection. But trial judges have become too loose in enforcing the Alaska Supreme Court's admonition. A defendant who brings a gun to an encounter and uses it to finish a fight should not be able to claim self-defense.

Improving the Law of Self-Defense, Deadly Force In Self-Defense, Heat Of Passion, And Other Defenses. A related change is also necessary in the law of self-defense and "heat of passion." The prosecution always bears the burden of proving the essential elements of an offense, but if the defendant is going to raise a defense of which the defendant has exclusive knowledge, the defendant should have the burden to prove the defense by a preponderance of the evidence. This is called an affirmative defense, and the legislature has already created many examples in the Alaska Statutes. For example, duress is an affirmative defense. To establish duress, the defendant must prove that the defendant was coerced to commit a crime by a threat of imminent harm. The burden is correctly on the defendant, because only the defendant knows the effect of the threat.

The bill would change several similar defenses -- heat of passion, self-defense, the use of deadly force in self-defense, and defense of a third person -- to affirmative defenses. Currently, prosecutors must prove a negative. For example, if the defendant claims heat of passion (a defense to intentional murder in the first and second degrees), the state would have to disprove that the victim, who is dead, acted in a way to arouse the passion of the defendant. The bill provides that the defendant, who is often the only eyewitness still alive at trial, would be required to prove that "heat of passion" was aroused because of provocation by the victim. Citizens who defend themselves in their own homes and must use force to protect their families are not affected by this change. If the person acting in self-defense is a peace officer, or is on the person's own premises and is not assaulting a household member, this bill leaves the current law on self-defense intact, and requires that the prosecution disprove self-defense.

Right of Arrested Person. The bill would clarify that a person who is arrested has the right to a telephone call or visit from a friend, relative, or attorney. However, the right belongs to the person arrested, to exercise at his or her discretion.

Limiting Collateral Attacks on Prior Convictions. When an habitual criminal commits a new crime, the punishment is often greater because of the person's prior convictions. But it is now a common tactic in the new criminal case to attack the old convictions on technicalities. This means that before the prosecutor can even begin to prove the new crime, the prosecutor is forced to validate what happened in an old conviction, which is often from another state. This is generally a fruitless inquiry. The law already provides many avenues by which offenders can have their convictions reviewed. Unless a conviction was invalid because the defendant was denied the right to counsel or to a jury trial, the state should be able to rely on those convictions in prosecuting repeat criminals.

Admissibility of Prior Convictions. In the criminal code, the conviction of a prior crime is, in a few cases, an element of another offense. For example, having two prior drunk driving convictions within a certain period of time is an element of felony drunk driving. The bill would clarify that in these circumstances, evidence of prior convictions is admissible in order to prove all the elements of the charged offense. Although generally courts do not admit this evidence, the legislature has the authority to allow it. The bill also would overrule *Ostlund v. State*, 51 P.2d 938 (Alaska App. 2002), which requires a bifurcated trial, by allowing, at any time in the prosecution, evidence of prior convictions in the state's case if the prior conviction is an element of the current crime.

Grants of Immunity. The bill would give prosecutors the information needed to decide whether to grant immunity to a witness. If a witness claims a privilege against self-incrimination and refuses to testify, the only way to obtain that testimony under the Alaska Constitution is to give the person complete immunity for any crime the person may testify about. This makes it critical for the state to know what crimes will be immunized before offering immunity, but that is impossible under current procedures used by the courts. The current practice is for the judge to decide whether the witness is entitled to immunity in a closed hearing in which the prosecution is not allowed to be present. The prosecutor thus does not know what crimes require immunity. A homicide prosecution that currently is awaiting trial is a good example. The defendant, while in jail, allegedly tried to arrange for the killing of the trooper transporting him to court, so the defendant could escape. A cellmate notified the police, but will not testify without immunity. The judge held a hearing without the prosecutor, and ruled that the cellmate had a privilege against self-incrimination, but wouldn't reveal how the cellmate's testimony would incriminate him -- or even whether the cellmate feared prosecution for a felony or a misdemeanor. Unwilling to grant immunity blindfolded, the prosecutor must forego this powerful evidence of consciousness of guilt of the defendant.

The bill would give guidance to the court for evaluating a claim of privilege, and would allow the prosecutor to obtain necessary information and to be present at any hearings on the matter. Judges thus would no longer decide these issues without hearing both sides, and the prosecutor can make an informed decision about immunity.

Consecutive sentences. This bill also would strengthen and clarify the law regarding consecutive sentences for conviction of more than one crime. In 1982, AS 12.55.025(e) and (g), which mandated full consecutive sentences for each count of homicide, assault, and sexual offense, were enacted. But because of imprecise drafting, this clear expression of legislative intent was instead interpreted to be merely a "legislative preference" for consecutive

sentences that courts were free to ignore. *State v. Andrews*, 707 P.2d 900 (Alaska App. 1985), *aff'd.* 723 P.2d 85 (Alaska 1986). Later, in 1988, the legislature mandated consecutive sentences for assaults against children, but the provision that was finally enacted provided no firm guidance to the courts, especially in the most serious sexual assaults. AS 12.55.025(h).

As a result of the interpretations of the courts, trial judges ignore or pay only nominal recognition to the legislature's preference for consecutive sentences. For example, in the recent case of *State v. Glaser*, the defendant was convicted of two counts of second degree murder and one count of first degree assault. The sentence imposed by the superior court treated the drunk driving killing of two people and the serious physical injury of a third person as if only one victim had been affected by the crime, and imposed a sentence only slightly longer than the mandatory minimum sentence for a single count of second degree murder.

This bill would adopt minimum requirements for consecutive sentencing in cases involving multiple counts of homicide, kidnapping, first degree sexual assault, and first degree sexual abuse of a minor (sexual penetration). Although this bill does not go so far as the fully consecutive sentencing reflected in the 1982 legislation, it does provide more specific guidance than exists in current law. In a second degree murder case such as *State v. Glaser,* for example, the bill would require that imprisonment for at least 10 consecutive years be imposed for the second conviction of second degree murder, and some additional consecutive term of imprisonment be imposed for the assault on the third victim.

Better Notice of Expert Witnesses And Defenses. Delay, confusion, and other problems often result from the inefficient exchange of information about defenses and expert witnesses in criminal prosecutions. The discovery rules are supposed to make pretrial procedure orderly and avoid surprises at trial. However, our prosecutors report that at times attorneys who give late notice or no notice rarely suffer adverse consequences from the court, which encourages further disregard of the rules. The bill would adopt procedures for a more orderly exchange of expert witness information, and it also would adopt firm sanctions for violation of the rules. If a party does not provide notice of an expert in the time set out in the rule, the person may not use the expert testimony. The bill also would require that notice of certain defenses be made as required by the rules or the offering of that defense could be forfeited.

Expanding Impeachment of Testimony. The bill also would amend several provisions in the Alaska Rules of Evidence. Under the current rules, a statement obtained from a defendant that was not preceded by the warnings required in *Miranda v. Arizona,* 384 U.S. 436 (1966), is not admissible except in a prosecution for perjury. That is, although the statement may not be used against the person for the underlying offense, it may be used in a subsequent perjury prosecution if the person testifies falsely at trial. The bill would expand this exception to allow the statement to be used for impeachment if the person testifies falsely. Under the current court rule, a defendant in a murder case whose statements to police were suppressed could lie with impunity on the stand, knowing that at most the defendant faced a later prosecution for perjury. The bill's change to the court rule would, however, allow the defendant's statement to be used to contradict the defendant's testimony in the murder trial if the defendant lied.

A similar court rule limits the use of evidence obtained with an invalid search warrant or if the police make a mistake in the technical rules governing search and seizure. Such evidence is not admissible for the underlying prosecution, and can only be used in a subsequent perjury case. This bill would allow this evidence to be used to impeach the defendant or other witness on cross-examination. The exclusionary rule discourages careless law enforcement by excluding illegally obtained evidence. It should not give witnesses a chance to testify falsely at trial.

Current rules also allow a witness's credibility to be impeached by a prior conviction for a crime involving dishonesty or false statement (for example, theft, robbery, burglary, perjury) if the conviction occurred within five years of the testimony. However, in many instances, the five-year period is over before the person is even out of jail, so juries never find out that the person has a conviction for dishonesty. This bill would amend the court rule to allow juries to be told of such convictions if less than five years has elapsed from the person's unconditional discharge from probation or parole.

Giving Juries the Full Picture in Domestic Violence Cases. Domestic abusers often succeed in pressuring their domestic partners into not testifying against the abuser. In order to prosecute such cases, the prosecutor must be able to introduce evidence from other persons to tell the jury the whole story. But if the jury isn't allowed to know what was said immediately after the assault, the jury only gets part of the story. We can change this, and provide more perpetrators with the help they need to stop abusing. Victims of domestic violence are often unavailable to testify at trial -- often for compelling reasons concerning their safety and the safety of their children. Under current court rules, if the victim is not present, the statements of the victim are admissible only if the statements qualify under the narrow rule for "excited utterances."

This bill would expand that rule in domestic violence cases, so that a jury can learn about all statements made within 24 hours of the crime, if there are other indications of reliability. This hearsay exception would apply to statements that an assault occurred, and also if the victim recanted and denied that an assault occurred.

New Mitigating Factor for Defendants Who Show Concern for Victims of Sexual Offenses. Victims of sexual offenses, more so than any other crime, dread testifying in open court and often view giving testimony as being victimized again. They must not only testify in front of a jury of citizens and the defendant who violated them, but it must be done in public and often in cases that gain press attention. This is very traumatic for the victim. Sex offenders who have genuine remorse for their crimes do not want to put the victim through this crucible. For those sex offenders who quickly plead guilty, thus sparing their victims the ordeal of public testimony, this bill would provide a statutory "mitigating factor" that the judge may take into consideration in reducing the person's sentence.

I urge your prompt and favorable consideration of this bill.

Sincerely,

Frank H. Murkowski
Governor

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 4/4/03

FURTHER: Finance

Date of 5-Day Notice: 4/4/03
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4/2/04

Judiciary Committee considered SENATE BILL NO. 170

SB 170 CRIMINAL LAW/SENTENCING/ PROBATION/PARole

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

and recommends:

[✓] be **replaced** with _____ **CS** SB 170 (JUD)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] same title
[✓] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR #____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
COR	3/10/04	✓		3

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Thernault			X	
Ogan			X	
French			X	
CHAIR: Ralph Seekins	✓			

SENATE FINANCE COMMITTEE

S I G N - I N

SB 170-CRIMINAL LAW/SENTENCING/ PROBATION/PAROLE

NAME: Susan Parkes Subject/Bill No: 170

Co./Dept./Title: Department of Law Phone: 907-269-6379

Address: 310 K Street Suite 507 Anchorage Zip: 99501

Do you wish to testify? X Yes ___No ___Respond To Questions

NAME: Cindy Cashen Subject/Bill No: 170

Co./Dept./Title: MADD Phone: 463 2562

Address: 211 4th St, Suite 3M, JNU Zip: 99801

Do you wish to testify? X Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

SITE: Offnets *COMMITTEE:* SFIN *DATE:* 4/16/04	*SUBJECT OF MEETING:* *BILL # SB170* *UPDATE #:*

P R I N T YOUR NAME	COMMUNITY	REPRESENTING/AFFILIATION	DO YOU WANT TESTIFY Y or N
Barbara Brink		Public Defender	Ans. ?'s
Al Storey		Alaska State Troopers	Ans. ?'s