

SB

3005

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 7/27/06

FURTHER:

Date of 5-Day Notice: Special Session
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 3005

SB 3005 DETENTION/IDENTIFICATION; CONTEMPT

"An Act relating to contempt of court and to temporary detention and identification of persons."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s),
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>					X
<i>[Signature]</i>		✓			
<i>[Signature]</i>		✓			
				✓	
CHAIR:					

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

August 1, 2006

SUBJECT: CSSB 3005(); Work Order No. 24-GS3097\G

TO: Senator Con Bunde

FROM: Pam Finley *PF*
Revisor of Statutes

Enclosed is the referenced CS. The provisions of this bill that require a person to identify himself or herself and submit to photographing or fingerprinting are legally problematic. If the police have reasonable grounds to believe the person was involved in criminal activity, they may require the person to identify himself or herself. Hiibel v. Sixth Judicial District Court of Nevada, 542 U.S. 1201 (2004). However, the U.S. Supreme Court held in Brown v. Texas, 443 U.S. 47 (1979) that the Fourth Amendment to the U.S. Constitution prohibits the police from requiring identification of a person "in the absence of any basis for suspecting [the person] of misconduct." Id. at 52. Whether a "stop-and-identify" statute is constitutional depends on "the gravity of the public concerns served by the [requirement], the degree to which the [requirement] serves the public interest, and the severity of the interference with individual liberty." Brown at 50 -51. I do not know whether the public interest in identifying a witness would outweigh the person's privacy rights. I did, however, want you to be aware of the issue.

PF:ljw
06-287.ljw

Enclosure

CS FOR SENATE BILL NO. 3005()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - THIRD SPECIAL SESSION**

BY

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to contempt of court and to temporary detention and identification of**
2 **persons; and providing for an effective date."**

3 **BE IT ENACTED BY THE LFGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 09.50.020(a) is amended to read:

5 (a) A person who is guilty of contempt

6 (1) may be punished [IS PUNISHABLE] by a fine of not more than
7 \$300 or by imprisonment for not more than six months for a contempt under

8 (A) AS 09.50.010(1) or (2);

9 (B) AS 09.50.010(3) - (12) if [. HOWEVER, WHEN THE
10 CONTEMPT IS ONE MENTIONED IN AS 09.50.010(3) - (12), OR IN AN
11 ACTION BEFORE A MAGISTRATE, THE PERSON IS PUNISHABLE BY
12 A FINE OF NOT MORE THAN \$100 UNLESS] it appears that a right or
13 remedy of a party to an action or proceeding was defeated or prejudiced by the
14 contempt; or

1 (C) AS 09.50.010(5) or (10) if the conduct involves the
 2 failure to honor a subpoena or refusal to be sworn or answer as a witness
 3 in connection with a civil or criminal court proceeding or an appearance
 4 before the grand jury;

5 (2) may be punished by a fine of not more than \$100 for a
 6 contempt under AS 09.50.010(3) - (12), except as otherwise provided in (1)(B) or
 7 (1)(C) of this subsection [, IN WHICH CASE THE PENALTY SHALL BE AS
 8 PRESCRIBED FOR CONTEMPTS DESCRIBED IN AS 09.50.010(1) AND (2)].

9 **Sec. 2** AS 12.50 is amended by adding a new section to read:

10 **Article 3. Temporary Detention and Identification of Persons.**

11 **Sec. 12.50.201. Temporary detention and identification of persons.** (a) A
 12 peace officer may temporarily detain a person under circumstances that give the
 13 officer reasonable suspicion that

14 ^{felony} (1) the person witnessed or was at or near the scene of the commission
 15 of a crime against a person under AS 11.41, a felony property crime under AS 11.46,
 16 or misconduct involving weapons under AS 11.61.190 or 11.61.195(a)(3);

17 (2) the person has information of material aid in the investigation of
 18 that crime; and

19 (3) the temporary detention of the person is reasonably necessary to
 20 obtain or verify the identification of the person, to obtain an account of the crime, to
 21 protect a crime victim from imminent harm, or for other exigent circumstances.

22 (b) A peace officer who temporarily detains a person under (a) of this section
 23 may

24 (1) detain the person only as long as reasonably necessary to
 25 accomplish the purposes of that subsection;

26 (2) take one or more photographs of the person, if photographs can be
 27 taken without unreasonably delaying the person or removing the person from the
 28 vicinity; and

29 (3) if the person does not provide valid government-issued
 30 photographic identification or the officer has reasonable suspicion that the
 31 identification is not valid.

1 (A) serve a subpoena on the person to appear before the grand
2 jury where the crime was committed; and

3 (B) take the person's fingerprint impressions if

4 (i) the crime under investigation is murder, attempted
5 murder, or misconduct involving weapons under AS 11.61.190 or
6 11.61.195(a)(3); and

7 (ii) fingerprint impressions can be taken without
8 unreasonably delaying the person or removing the person from the
9 vicinity.

10 (c) A peace officer electing to serve a subpoena under (b) of this section may
11 not require the person to sign the subpoena or another document. The officer or the
12 subpoena must advise the person that failure to honor the subpoena is punishable as
13 criminal contempt of court under AS 09.50.010. A person receiving a subpoena to
14 testify under (b) of this section may request the district attorney to withdraw the
15 subpoena if, before the grand jury proceeding for which the person has been served a
16 subpoena to appear, the person provides the peace officer who served the subpoena
17 with valid government-issued photographic identification.

18 (d) Photographs or fingerprints taken under (b) of this section

19 (1) may be used for identification purposes only, and not for criminal
20 investigative purposes unless it is determined that the person is suspected of
21 committing a crime within the scope of the investigation; and

22 (2) must be destroyed upon the earlier of the following occurrences
23 unless it is determined that the person is suspected of committing a crime within the
24 scope of the investigation:

25 (A) the person has testified in a grand jury or court proceeding
26 in connection with the matter under investigation; or

27 (B) completion of the prosecution of the crime being
28 investigated.

29 (e) A person who refuses or resists the taking of photographs or fingerprints
30 under this section commits a class B misdemeanor, punishable as provided in
31 AS 12.55, except that a sentence of imprisonment, if imposed, may not exceed 10

1

days.

2

* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).



Alaska State Legislature

Senator Con Bunde

Senate District P

Vice Chair: Senate Finance Committee

Chair: Senate Labor & Commerce Committee

Sponsor Statement

SB 3005

"An Act relating to contempt of court and to temporary detention and identification of persons."

Written in Alaska's constitution is an acknowledgement of an individual's freedom and an individual's corresponding obligation to our state. Striking a balance between the needs of society to prosecute crime, the rights of a defendant to witnesses on their behalf and the right of an individual to be free from unreasonable arrest is the central issue in SB 3005 Detention of Material Witnesses.

A material witness is a witness whose testimony is crucial to either the defense or prosecution. SB 3005 adds a section to AS 12.50 allowing peace officers to temporarily detain material witnesses at the scene of a crime. SB 3005 outlines that the detention is allowed only when it is necessary to obtain the identification of the witness, to obtain an account of the crime, to protect a crime victim from imminent harm, or for other exigent circumstances.

SB 3005 allows a police officer who has detained a person under these circumstances to photograph the person; serve a subpoena on the person to appear before the grand jury if the person fails to provide valid government-issued identification and; take the person's fingerprints if the person is detained in connection with the investigation of a murder, attempted murder or misconduct involving weapons in the first degree under AS 11.61.190.

Giving peace officers the ability to gain the identification of material witnesses at the scene of a crime protects both the needs of society and the rights of the individual. Material witnesses can be the deciding factor in bringing indictments and prosecuting crime. Alternatively, material witnesses may also provide crucial testimony to defendants' arguments. SB 3005 balances the interests of individuals' freedom with the need to collect information at the scene of a crime.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION - 3rd Special

Fiscal Note Number: 1
 Bill Version: SB 3005
 (S) Publish Date: 7/27/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to contempt of court and to
temporary detention and identification of persons." RDU CRIMINAL
 Sponsor Governor Component Criminal Justice Litigation
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows for stiffer penalties for contempt of court when it arises from failure to honor a subpoena or refusal to be sworn or answer as a witness under was in connection with a court proceeding relating to a felony crime or an appearance before the grand jury. It also creates a new Article in the Criminal Code under Chapter 50 (Witnesses). The new article allows a peace officer to temporarily detain a person who witnessed or may have witnessed a crime or the detention is necessary to identify the person, obtain an account of the crime or protect the person from imminent harm or for other exigent circumstances. It allows the peace officer to subject the detainee to certain procedures such as photographs or fingerprints and makes it a class B misdemeanor if the person refuses or resists the taking of photographs or fingerprints. Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 7/27/06 9:55 AM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 7/27/2006
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 3005
 (S) Publish Date: 7/27/06

Revision Date/Time (Note if Revision): 7/27/06 11:26 a.m. Dept. Affected: Administration
 Title: An act relating to material witnesses; ... RDU: Legal and Advocacy Services
 Component: Office of Public Advocacy
 Sponsor: Governor
 Requester: _____ Component No. 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill permits a material witness to be detained and fingerprinted at the scene of a crime under certain exigent circumstances. It also amends the penalty statute for contempt.

This bill is not expected to have an fiscal impact on the Office of Public Advocacy.

Prepared by: Joshua P. Fink, Director
 Division: Office of Public Advocacy
 Approved by: Melanie Millhorn, Deputy Commissioner
 Agency: Administration

Phone (907) 269-3500
 Date/Time 7/27/06 11:26 a.m.
 Date 7/27/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 3005
 (S) Publish Date: 7/27/06

Revision Date/Time (Note if correction): 7/27/06 / 11:24 a.m. Dept. Affected: Administration
 Title: An Act relating to material witnesses RDU: Legal and Advocacy Services
 Component: Public Defender Agency
 Sponsor: Governor
 Requester: _____ Component No: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill permits a material witness to be detained and fingerprinted under certain exigent circumstances. It also amends the penalty statute for contempt.

This bill is not expected to have an impact on the Public Defender Agency's fiscal operations.

Prepared by: Quinlan Steiner, Director Phone (907) 334-4414
 Division: Public Defender Agency Date/Time 7/27/2006 11:24 a.m.
 Approved by: Melanie Millhorn, Deputy Commissioner Date 7/27/2006
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: SB 3005
(S) Publish Date: 7/27/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title: "An act relating to detention of material witnesses" RDU: Institutional Facilities
Sponsor: Governor Component: Institution Director's Office
Requester: _____ Component No.: 1381

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
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CHANGE IN REVENUES ()						
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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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

The department anticipates an extremely small number of potential cases each year that may be impacted by the language contained in the legislation. Due to the small number of potential cases and the fact that a sentence, if imposed, may not exceed 10 days of imprisonment, passage of the legislation should not have a significant fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Approved by: Portia C.K. Parker, Deputy Commissioner
Agency: Department of Corrections

Phone (907) 465-3339
Date/Time 7/27/06 10:16 AM
Date 7/27/2006



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Rules By Request of THE GOVERNOR

Current Version: SB 3005

Contact: Lauren Rice, 269-0181

Fact Sheet for: Senate Bill3005

Short Title: DETENTION/IDENTIFICATION; CONTEMPT

Summary:

- Increases the penalty for contempt of court for failure to honor a subpoena or refusal to answer as a witness, or to appear before the grand jury.
- Adds a section to AS 12.50 allowing a peace officer to temporarily detain a person under circumstances that give the officer reasonable suspicion that:
 - the person witnessed a crime or was in the vicinity of a crime such as homicide or manslaughter;
 - the person may have information of material aid in the investigation of that crime, and;
 - the temporary detention is reasonably necessary to obtain or verify the identification of the person, to obtain an account of the crime, to protect a crime victim from imminent harm, or for other exigent circumstances.
- Allows a police officer who has detained a person under these circumstances to:
 - photograph the person;
 - serve a subpoena on the person to appear before the grand jury if the person fails to provide valid government-issued identification;
 - take the person's fingerprints if the person is detained in connection with the investigation of a murder, attempted murder or misconduct involving weapons in the first degree under AS 11.61.190.
- Prohibits the peace officer from requiring the person to sign a subpoena issued under this section, and requires the peace officer to advise the person that failure to honor the subpoena is punishable as criminal contempt of court.
- Allows a person receiving a subpoena to request the district attorney to withdraw the subpoena if the person provides a valid government-issued photographic identification prior to the grand jury proceeding.
- Makes it a class B misdemeanor to refuse or resist the taking of photos or fingerprints, and outlines procedures for retaining or destroying them.

Benefits:

- Balances the need to protect individual freedom with the ability to prosecute crime and to provide defendants with witnesses on their behalf.

Background:

- A material witness is crucial to either the defense or prosecution. Unfortunately, material witnesses often refuse to cooperate with law enforcement officials, significantly impeding the ability to bring indictments or prosecute crime. SB 3005 protects material witnesses from unreasonable arrests or confinement and helps ensure the availability of crucial testimony.

Citation/Title

RCRP Rule 5, RULE 5. PROCEEDINGS BEFORE THE JUDGE OR MAGISTRATE

Rules of Criminal Procedure, Rule 5

**WEST'S ALASKA COURT RULES
RULES OF CRIMINAL PROCEDURE
PART II. PRELIMINARY PROCEEDINGS**

Current with amendments received through 8/15/2005

RULE 5. PROCEEDINGS BEFORE THE JUDGE OR MAGISTRATE**(a) Appearance Before Judge or Magistrate.**

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. Unnecessary delay within the meaning of this paragraph (a) is defined as a period not to exceed twenty-four hours after arrest, including Sundays and holidays.

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance,

then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within twenty-four hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for the counsel to be appointed, if appropriate.

(3) The responsibility for ensuring that the arrested person is taken before a judge or magistrate as specified in subsections (1) and (2) of this section (a) shall be borne equally by

(i) municipal police officers and municipal jail personnel, and by

(ii) state troopers, state jail personnel, and all other peace officers.

No distinction shall be drawn between cases in which arrest was made pursuant to a warrant and cases in which arrest was made without a warrant.

*342 (4) Whenever the person arrested is taken for examination before a judge or magistrate other than the one who issued the warrant, the complaint and any other statement or deposition on which the warrant was granted must be furnished to the defendant and must be communicated to the judge or magistrate before whom the person arrested appears.

(5) Whenever a person arrested without a warrant is brought before a judge or magistrate, a complaint shall be filed forthwith.

(6) Judges and magistrates shall be available at all times to receive bail, and each judge and magistrate individually shall have authority to delegate this duty to the person admitting the defendant to jail, or to such other person as shall in the determination of a judge or magistrate be qualified for this purpose.

(b) Rights of Prisoner to Communicate with Attorney or Other Person. Immediately after arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both an attorney and any relative or friend. Any attorney at law entitled to practice in the courts of Alaska, at the request of either the prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit the prisoner in private. This paragraph does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances proscribed under AS 11.56.755.

(c) Statement by Judge or Magistrate--Right to Counsel--Bail. The judge or magistrate

(1) shall inform the defendant of the complaint and of any affidavit filed therewith, and

(2) shall require that a copy of the complaint and of any affidavit filed therewith be delivered to the defendant if this has not already been done, and

(3) shall inform the defendant

(i) of the right to retain counsel, and

(ii) of the right to request the assignment of counsel if the defendant is unable to obtain counsel, and

(iii) of the right to have a preliminary examination, and

(4) shall inform the defendant that the defendant is not required to make a statement and that any statement may be used against the defendant. The judge or magistrate shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by law and by these rules.

(d) Initial Determination of Probable Cause.

*343 (1) If the defendant was arrested without a warrant, the judicial officer at the first appearance shall determine whether the arrest was made with probable cause to believe that an offense had been committed and that the defendant had committed it. This determination shall be made from the complaint, from an affidavit or affidavits filed with the complaint, or from an oral statement under oath of the arresting officer or other person which is recorded by the judicial officer. The determination shall be noted in the file.

(2) If the defendant was arrested on a warrant for a failure to appear at a prior proceeding, the court shall determine from the file whether the defendant's initial arrest was pursuant to a warrant and, if not, whether at a prior proceeding the court made an initial determination of probable cause as required by subparagraph (d)(1). If there has been no judicial determination of probable cause, the court shall proceed as under subparagraph (d)(1).

(3) If probable cause is not shown, the judicial officer shall discharge the defendant.

(e) Felonies.

(1) If the charge against the defendant is a felony, the defendant shall not be called upon to plead.

(2) The judicial officer shall inform the defendant of the right to a preliminary examination. A defendant is entitled to a preliminary examination if the defendant is charged with a felony for which the defendant has not been indicted, unless

(A) the defendant waives the preliminary examination, or

(B) an information has been filed against the defendant with the defendant's consent in the superior court.

(3) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judicial officer shall forthwith hold the defendant to answer in the superior court.

(4) If the defendant does not waive preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time, but in no event later than

(A) 10 days following the initial appearance, if the defendant is in custody, or

(B) 20 days following the initial appearance, if the defendant is not in custody.

With the consent of the defendant and upon a showing of good cause, taking into account the public interest in prompt disposition of criminal cases, the judicial officer may extend the time limits specified in this subsection one or more times. In the absence of consent by the defendant, the judicial officer may extend these time limits only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice.

*344 (f) Misdemeanors.

(1) The judicial officer shall ask the defendant to enter a plea pursuant to Criminal Rule 11.

(2) If the defendant pleads not guilty, the court shall fix a date for trial at such time as will afford the defendant a reasonable opportunity to prepare.

[Amended effective July 15, 1994; July 15, 1995; by Laws 1998, c. 86, § 17; June 13, 1998.]

Note

Note to SCO 1339: Criminal Rule 5(b) was amended by § 17 ch. 86 SLA 1998 to make it clear that the rule does not give a prisoner the right to contact a victim or witness in violation of AS 11.56.755. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Citation/Title

AK ST Sec. 12.30.050, Release of material witnesses

*5105 Alaska Stat. § 12.30.050

**WEST'S ALASKA STATUTES
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 30. BAIL**

Current through the 2005 First Regular Session and First Special Session of the 24th Alaska Legislature

§ 12.30.050. Release of material witnesses

If it appears by affidavit that the testimony of a person is material in a criminal proceeding, and it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer shall impose conditions of release under AS 12.30.020. A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition. Release may be delayed for a reasonable period of time for the deposition of the witness to be taken.

Search this disc for cases citing this section.

Citation/Title

AK ST Sec. 12.30.020, Release before trial

*5090 Alaska Stat. § 12.30.020

WEST'S ALASKA STATUTES
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 30. BAIL

Current through the 2005 First Regular Session and First Special Session of the 24th Alaska Legislature

§ 12.30.020. Release before trial

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required or will pose a danger to the alleged victim, other persons, or the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community.

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to the alleged victim, other persons, or the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing as a custodian to supervise the person; the court shall, personally and in writing, inform the custodian about the duties required of a custodian, and that failure to report immediately in accordance with the terms of the order that the person released has violated a condition of release may result in the custodian's being held criminally liable under AS 11.56.758;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the person to return to custody after daylight hours on designated conditions;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

*5091 (5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(6) require the execution of a performance bond in a specified amount and the deposit in the registry of the court, in cash or other security; the performance bond must be imposed and enforced separately from any appearance bond, and the deposit to be returned upon the performance of the condition of release; or

(7) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of the alleged victim, other persons, or the community.

(c) In determining the conditions of release under (b) of this section, the judicial officer shall take into account

(1) the nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;

(2) the weight of the evidence against the person;

(3) the person's family ties;

(4) the person's employment;

AK ST Sec. 12.30.020, Release before trial

- (5) the person's financial resources;
- (6) the person's character and mental condition;
- (7) the length of the person's residence in the community;
- (8) the person's record of convictions;
- (9) the person's record of appearance at court proceedings;
- (10) the flight of the accused to avoid prosecution or the person's failure to appear at court proceedings; and
- (11) threats the person has made, and the danger the person poses, to the alleged victim.

(d) A judicial officer authorizing the release of a person under this section shall issue an order containing a statement of the conditions imposed.

(e) The judicial officer shall inform the person of the penalties that may be imposed for a violation of the conditions of release and advise the person that a warrant for the person's arrest will be issued immediately upon a violation or that the person may be arrested without a warrant for a violation of conditions of release as set out in AS 12.25.030(b).

(f) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed the conditions. If the judicial officer who imposed the conditions of release is not available, any other judicial officer in the district may review the conditions. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed.

*5092 (g) A judicial officer who orders the release of a person on a condition specified in (b) of this section may at any time amend the order to impose additional or different conditions of release, or to release the person under (a) of this section.

(h) Information offered or introduced at a hearing before a judicial officer to determine the conditions of release need not conform to the rules governing the admissibility of evidence in a court of law.

(i) The court shall issue written or oral findings to demonstrate why conditions provided under (b)(1) of this section needed to be imposed.

(j) If a person remains in custody after review of conditions by a judicial officer under (f) of this section, a subsequent review of conditions may be held at the request of the person. Unless the prosecuting authority stipulates otherwise, a judicial officer may not schedule a bail review hearing under this subsection unless

- (1) the person provides to the court and the prosecuting authority a written statement that information not considered at the previous review will be presented and includes a description of the new information;
- (2) the prosecuting authority has at least 48 hours' notice before the time set for the review requested under this subsection; and
- (3) at least 48 hours have elapsed between the previous review and the time set for the review requested under this subsection.

Amended by Laws 1994, c. 115, § 4, imd. eff. June 18, 1994; Laws 1997, c. 63, §§ 10 to 12, eff. July 1, 1997; Laws 2000, c. 124, § 4, eff. September 4, 2000; Laws 2004, c. 124, §§ 18, 19, eff. July 1, 2004; Laws 2005, c. 65, § 1, eff. July 14, 2005.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Laws 2004, c. 124, § 32(c) provides:

"(c) Sections 16, 18, and 19 of this Act apply to custodians who fail to report on or after July 1, 2004, for persons released for offenses committed before, on, or after July 1, 2004."

Laws 2000, c. 124, § 7 provides:

"Applicability. (a) Sections 1--3 and 5 of this Act apply to offenses committed on or after September 4, 2000. However, the underlying offense for which a person is on release before trial, sentence, or service of sentence may occur before, on, or after the September 4, 2000.

"(b) Section 4 of this Act applies to custodians appointed and performance bonds posted on or after September 4, 2000. However, offenses that give rise to the appointment of a custodian or the posting of the performance bond may occur before, on, or after September 4, 2000.

*5093 "(c) Section 6 of this Act applies to actions occurring before, on, or after September 4, 2000."

Laws 1997, c. 63, § 27(a) provides:

"Except as provided in (c) and (d) of this section, this Act applies to a criminal or juvenile hearing and proceedings held on or after the effective date of the relevant section of this Act, regardless of whether the criminal offense or delinquent act occurred before, on, or after the effective date of the relevant section of this Act."

Search this disc for cases citing this section.

Citation/Title

AK ST Sec. 12.50.010, Witness subpoenaed in this state to testify in another state

*5217 Alaska Stat. § 12.50.010

WEST'S ALASKA STATUTES
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 50. WITNESSES
ARTICLE 1. UNIFORM ACT TO SECURE ATTENDANCE IN CRIMINAL
PROCEEDINGS

Current through the 2005 First Regular Session and First Special Session of the 24th Alaska Legislature

§ 12.50.010. Witness subpoenaed in this state to testify in another state

(a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within the state to attend and testify in this state certifies under the seal of the court that there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence, that a person within this state is a material witness in that prosecution or grand jury investigation, and that the presence of that person will be required for a specified number of days, then, upon presentation of the certificate to a judge of a court of record in the judicial district in which the person is, the judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to the witness protection from arrest and the service of civil and criminal process, the judge shall issue a subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the subpoena. In any such hearing the certificate shall be prima facie evidence of all of the facts stated therein.

(c) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be immediately brought before the judge for said hearing; and if the judge at the hearing is satisfied of the desirability of the custody and delivery, for which determination the certificate shall be prima facie proof of this desirability, the judge may, in lieu of issuing subpoena, order that the witness be immediately taken into custody and delivered to an officer of the requesting state.

*5218 (d) If the witness who is subpoenaed as provided in this section, after being paid or tendered by a properly authorized person a sum equivalent to the cost of air fare round trip passage on a certificated carrier or such prepaid passage and reasonable incidental travel allowance for going to and from airports plus \$20 per day for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of a witness who disobeys a subpoena issued from a court of record in this state.

Search this disc for cases citing this section.

Sec. 12.30.050. Release of material witnesses.

If it appears by affidavit that the testimony of a person is material in a criminal proceeding, and it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer shall impose conditions of release under AS 12.30.020 . A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition. Release may be delayed for a reasonable period of time for the deposition of the witness to be taken.

Sec. 12.30.060. Penalties for failure to appear.

A person released under the provisions of this chapter who knowingly fails to appear before a court or judicial officer as required shall incur a forfeiture of any security that was given or pledged for the person's release and, if the person was released

(1) in connection with a charge of felony, or while awaiting sentence or pending appeal after conviction of an offense, is guilty of a felony and upon conviction is punishable by a fine of not more than \$5,000 or by imprisonment for not more than five years, or by both;

(2) in connection with a charge of misdemeanor, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than the maximum provided for the misdemeanor, or by imprisonment for not more than one year, or by both; or

(3) for appearance as a material witness, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.

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(3) for appearance as a ►material◄ ►witness◄, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.



*Mark, Begich,
Mayor*

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500



Service since 1921

Alaska State 24th Legislature

Legislators;

This is a letter of support for HB 3007, the Material Witness Bill.

Anchorage and the entire State are growing; and with this growth bring both new and more complex issues in to our communities. The challenge for law enforcement is to keep up with the changes in societal trends that negatively impact public safety and to balance our response to them within the mandates of the law. Sometimes to meet this challenge requires change in our tactics and/or our law. In considering such changes, most of us first look to other jurisdictions to examine how they had responded and if had been effective. And the fact that nearly every state and the federal government have addressed this issue in the adoption of a material witness law is significant and indicative that this law is essential to combat this societal problem.

I know this bill will assist every law enforcement officer in his and her pledge to the citizens we all serve. I support this bill and appreciate your collective efforts to help all Alaskans be a little safer in our changing world.

Walt Monegan
Chief of Police



Municipality of Anchorage

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Mayor Mark Begich

Office of the Mayor

July 3, 2006

The Honorable Frank Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Murkowski:

I understand from media accounts that you are considering an initiative to look into youth violence issues in Anchorage. We welcome the State's involvement and look forward to being a part of your efforts.

As you know, my administration has been working with police, prosecutors, judges and legislators on several initiatives to speed up the prosecution of criminals in Anchorage to get them off the streets quicker and better use technology to prevent crime.

Unfortunately, a backlog within the State criminal justice system is preventing the quick prosecution of criminals and their removal from Anchorage streets. An ever increasing number of Anchorage police officers are bringing a corresponding increase in the number of cases to the under-resourced State criminal justice system. Too many of these cases are not being processed in a timely manner, resulting in delays, inadequate sentences and defendants awaiting trial committing more crime. This worsens Anchorage's gang problem.

According to the Anchorage District Attorney's Office, there are more than 2,500 felony cases currently awaiting disposition by the State. At the same time, the number of trials held in Anchorage has dropped dramatically, from nearly 140 in 1986 to about 30 in 2004. Some murder cases awaiting trial date back to 1999. As of January 2006, there were nearly 300 felony trials pending in Anchorage, including 28 homicides.

Below, I have outlined some issues the Municipality considers to be priorities that can be remedied through State leadership and partnering with local governments:

Unclog the court backlog – The Municipality strongly supported your bill passed by the Legislature (SB237) to add Superior Court judges in Anchorage, Kenai, Palmer and Fairbanks, and expand courthouses. Yet, we believe the measure fell short because it failed to fund the additional elements needed to make the entire State criminal justice system work properly – additional prosecutors and public defenders.

Community, Security, Prosperity

As noted, more than 40 new police officers have been added in Anchorage since 2003. These officers are bringing an increasing number of cases to the DA's office. In 2003, 2,322 felony cases were accepted by the DA, 95 percent of them brought by APD. In 2005, that number had jumped more than 10 percent to 2,559. Yet, the DA's office reports that processing just those cases without accepting any new ones would take nine years. While awaiting processing, many defendants are released into the community, only to commit more crimes.

Improve technology so courts and police can share criminal data – Currently, the State court system and APD cannot electronically share some data about criminal defendants, such as bail status. This means when an officer encounters a violator on the street, the officer may not know whether that person is out on bail or has committed other crimes. Numerous other jurisdictions such as Arizona, Wisconsin and Chicago, have state-of-the-art systems to allow for sharing of such information.

A task force, the Multi-Agency Justice Integration Consortium (MAJIC), has been working since 2002 on this problem, but it remains an obstacle to getting criminals off the streets more quickly. My administration supports better technology within the court system to more rapidly process criminals and urges court officials to agree to information sharing with APD.

Ankle bracelets for gang members – Gang members present unique threats to the public because they often ignore probation and parole restrictions and frequently commit other crimes while awaiting disposition of their cases. The Municipality supports state legislation requiring judges to order gang members to wear ankle bracelets as a condition of their release. Removal of the bracelet would automatically send them back to jail. This would enable the police to better monitor gang members.

Stricter penalties for multiple traffic violations – In several high-profile cases recently, drivers who have previously been convicted of traffic violations receive only light punishment, and then go on to commit serious crimes including murder. This is the case with both Mark Elkins and Kris Felber, who both killed innocent Anchorage citizens. We support stricter State laws, perhaps modeled after "three strikes" laws in which drivers with long histories of multiple traffic violations face felonies. These drivers should be removed from the streets before they kill innocent victims.

We also support broadening the felon in possession statute by adding a subsection to AS 11.61.200 that makes it unlawful for a convicted felon to occupy a vehicle with a firearm in it.

Material witness law change – We support Sen. Con Bunde's legislation (SB206) regarding material witnesses, which unfortunately failed in the Legislature this year. This measure would preclude a repeat of last year's Dimond Center frustration faced by police officers as they attempted to gather information at the scene of a shooting and faced uncooperative witnesses.

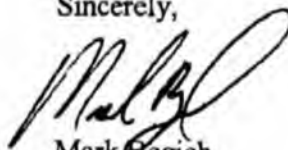
Federal prosecutor partnership – Processing of gang, drug and gun violations under federal law is quicker and the penalties far more strict than under state law. Former United States Attorney Tim Burgess proposed the Municipality of Anchorage assign city prosecutors to the federal prosecutor, to focus on gang, drug and gun cases. We recently received \$100,000 from the U.S. Department of Justice to launch this initiative and are matching it with local taxpayer dollars. We also are seeking \$400,000 annually for three years in a federal grant through U.S. Senator Lisa Murkowski and have asked the Legislature for support. Two city prosecutors and support staff would receive specialized training and be assigned to the federal prosecutor's office to focus on gang, drug and gun violations.

Last year, my administration launched a five-part anti-gang initiative which includes: improved intelligence gathering, better focused law enforcement operations, enhanced community education and support, better family support and tougher laws. In addition, the Tri-Borough Commission I have formed with Mat-Su Mayor Tim Anderson and Kenai Peninsula Mayor John Williams will be sponsoring a gang summit this fall with the U.S. Attorney's Office.

I want to stress that while additional laws may be necessary, the most immediate and effective solution is a sustainable revenue stream dedicated to enforcement, to the full functioning of the State Court System and a solid prevention program for our youth.

We would welcome the State's participation in tackling the problems of youth violence in our community. The Municipality of Anchorage requests a seat at the table for any of State effort and I look forward to the opportunity to discuss these issues with you at your convenience.

Sincerely,



Mark Begich
Mayor

CC: Select State Legislators
Anchorage Assembly members