

HB

133

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 133(JUD)
(H) Publish Date: 3/27/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: An Act relating to electronic monitoring of gang RDU: Criminal
probationers. Component: Criminal Justice Litigation
Sponsor: Representative Buch
Requester: House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 |

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| 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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The bill would require electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director
Division: Administrative Services Division
Approved by: Robert Meiners for Talis Colberg, Attorney General
Agency: Department of Law

Phone: 465-5427
Date/Time: 2/16/07 9:27 AM
Date: 2/16/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 133(JUD)
(H) Publish Date: 3/27/2007

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An act relating to requiring electronic monitoring RDU: Legal and Advocacy Services
as a special condition of probation... Component: Office of Public Advocacy
Sponsor: Rep. Buch
Requester: House Judiciary Component No.: 43

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | . | . | . | . | . | . |
| Travel | . | . | . | . | . | . |
| Contractual | . | . | . | . | . | . |
| Supplies | . | . | . | . | . | . |
| Equipment | . | . | . | . | . | . |
| Land & Structures | . | . | . | . | . | . |
| Grants & Claims | . | . | . | . | . | . |
| Miscellaneous | . | . | . | . | . | . |
| TOTAL OPERATING | . | . | . | . | . | . |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

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 | . | . | . | . | . | . |

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill requires the court to impose, as a special condition of probation, electronic monitoring with GPS tracking for persons convicted of criminal offenses related to gang related activity. This requirement appears to cover the entire period of probation, which may last five to ten years, and does not provide guidance on who would bear the cost. The burden of this additional requirement could impact the negotiation process and affect the litigation and trial rate. It is not possible, however, to determine with any accuracy the potential fiscal impact of this requirement. The Agency, therefore, submits an indeterminate fiscal note.

Prepared by: Joshua P. Fink Phone: 907-269-3501
Division: Office of Public Advocacy Date/Time: 3/26/07 9:00AM
Approved by: Rachael Petro, Deputy Commissioner Date: 3/26/07 9:30AM
Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 133(JUD)
(H) Publish Date: 3/27/07

Revision Date/Time (Note if correction): 3/13/07 1:45pm Dept. Affected: Corrections
Title: An Act relating to electronic monitoring of a gang RDU: Administration and Operations
probationer. Component: Statewide Probation & Parole
Sponsor: Representatives Buch, Gruenberg, Holmes, Lynn
Requester: House Judiciary Component No.: 2826

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | . | . | . | . | . | . |
| Travel | . | . | . | . | . | . |
| Contractual | . | . | . | . | . | . |
| Supplies | . | . | . | . | . | . |
| Equipment | . | . | . | . | . | . |
| Land & Structures | . | . | . | . | . | . |
| Grants & Claims | . | . | . | . | . | . |
| Miscellaneous | . | . | . | . | . | . |
| TOTAL OPERATING | . | . | . | . | . | . |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES (1156) | . | . | . | . | . | . |
|----------------------------------|---|---|---|---|---|---|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | . | . | . | . | . | . |
| 1003 GF Match | . | . | . | . | . | . |
| 1004 GF | . | . | . | . | . | . |
| 1005 GF/Program Receipts | . | . | . | . | . | . |
| 1037 GF/Mental Health | . | . | . | . | . | . |
| Other (Receipt Supported Services 1156) | . | . | . | . | . | . |
| TOTAL | . | . | . | . | . | . |

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-time | . | . | . | . | . | . |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections (DOC) can not determine the fiscal impact of this legislation. Data is not available on the number of offenders who would be impacted by this legislation. Active GPS - Intensive Supervision Surveillance Program (ISSP) monitoring would require the department to have one probation officer per every 15 offenders. This is the most intensive supervision program available, 24 hours a day, 7 days a week. Passive GPS - ISSP would require one probation officer per every 20 offenders and Passive GPS without ISSP would require one probation officer per every 40 offenders. These programs have less contact monitoring but are monitored by a computer and alarm system that contacts the probation officer if an offender goes in a prohibited area. Each offender would be required to pay \$17.04 per day to be on active or passive monitoring however, the department estimates only 30% of offenders will be able to pay. There are currently 96 offenders on probation that (continued on Page 2)

Prepared by: Sharleen Griffin, Director Phone: (907) 465-3339
Division: Administrative Services Date/Time: 3/13/07 1:44 PM
Approved by: Dwayne Peoples, Deputy Commissioner Date: 3/13/2007
Agency: Department of Corrections

FISCAL NOTE #3

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSHB 133(JUD)

ANALYSIS CONTINUATION

that have gang related indicators, of these 36 are under intensive supervision. The DOC does not currently conduct a uniform assessment of offenders to identify gang related offenders. It is expected that the number of offenders in the system is much higher then currently identified. The Juvenile System currently has 50 probationers and 23 pending probationers that may fit under this legislation. This indicates that a higher number will need to be under supervision in the future by DOC then currently estimated.

Please see below for costs the department has identified.

| | ACTIVE GPS (ISSP) | PASSIVE GPS (ISSP) | PASSIVE GPS (w/out ISSP) |
|--|------------------------------|-------------------------------|-------------------------------------|
| <u>Ratio</u> | | | |
| Number of PO's | 1 | 1 | 1 |
| Number of Offenders | 15 | 20 | 40 |
| <u>Annual Costs- 1 Probation Officer</u> | | | |
| Personal Services | \$107,814.00 | \$107,814.00 | \$107,814.00 |
| Travel | \$2,000.00 | \$2,000.00 | \$2,000.00 |
| Services (exclude GPS) | \$11,700.00 | \$11,700.00 | \$11,700.00 |
| Commodities* | \$13,100.00 | \$13,100.00 | \$13,100.00 |
| TOTAL | \$134,614.00 | \$134,614.00 | \$134,614.00 |
| <i>*Includes One Time Start Up Costs of \$10,700</i> | | | |
| <u>Annual Revenues</u> | | | |
| Number of Offenders | 15 | 20 | 40 |
| Daily Cost per Offender | \$17.04 | \$17.04 | \$17.04 |
| Annual Cost Per Offender | \$6,219.60 | \$6,219.60 | \$6,219.60 |
| Estimate of Collections | 30% | 30% | 30% |
| TOTAL | \$27,988.20 | \$37,317.60 | \$74,635.20 |
| <u>Cost Per Offender / Per Day</u> | | | |
| GPS Monitoring Cost | \$9.25 | \$9.25 | \$9.25 |
| Weekly Cost for 1 Offender | \$64.75 | \$64.75 | \$64.75 |
| Annual Cost for 1 Offender | \$3,367.00 | \$3,367.00 | \$3,367.00 |
| <u>Annual Contractual Cost for GPS</u> | | | |
| Number of Offenders | 15 | 20 | 40 |
| Daily GPS Cost | \$9.25 | \$9.25 | \$9.25 |
| Number of Days | 365 | 365 | 365 |
| TOTAL | \$50,643.75 | \$67,525.00 | \$135,050.00 |
| TOTAL ESTIMATED COST | \$185,257.75 | \$202,139.00 | \$269,664.00 |
| Revenues (Receipt Services) | \$27,988.20 | \$37,317.60 | \$74,635.20 |
| General Funds | \$157,269.55 | \$164,821.40 | \$195,028.80 |

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 133(JUD)
(H) Publish Date: 3/27/07

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Electronic monitoring of gang probationer RDU Alaska Court System
Sponsor Representative Buch Component Trial Courts
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | . | . | . | . | . | . |

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| 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 | . | . | . | . | . | . |

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

House Bill 133 requires that a defendant be subject to electronic monitoring during the period of probation if the crime for which he or she was convicted was proven to be related to a criminal street gang. This bill would result in much closer monitoring of those probationers and likely lead to more petitions to revoke probation coming to the court. This increase in workload will mean an increase in the resources necessary to resolve those cases. However, because the number of cases likely to come before the court as a result of this new probationary condition is unknown, the extent of the bill's impact on the court system is too speculative to support a fiscal note at this time.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Approved by: Doug Wooliver for Stephanie Colo, Administrative Director
Agency: Alaska Court System

Phone: 463-4150
Date/Time: 2/22/07 2:30 PM
Date: 2/22/2007

*adopted
4-13-07*

25-LS0465W
Luckhaupt
4/13/07

CS FOR HOUSE BILL NO. 133()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

*P.O.
4-13-07*

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES BUCH, Gruenberg, Holmes, Lynn, Roses, Crawford, Fairclough, Neuman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to requiring electronic monitoring as a special condition of probation**
2 **and parole for offenders whose offense was related to a criminal street gang."**

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

4 *** Section 1. AS 12.55.100 is amended by adding a new subsection to read:**

5 (f) While on probation and as a special condition of probation for an offense
6 where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or
7 admitted, the court shall require that the defendant submit to electronic monitoring.
8 Electronic monitoring under this section must provide for monitoring of the
9 defendant's location and movements by Global Positioning System technology. The
10 court shall require a defendant serving a period of probation with electronic
11 monitoring as provided under this section to pay all or a portion of the costs of the
12 electronic monitoring, but only if the defendant has sufficient financial resources to
13 pay the costs or a portion of the costs. A defendant subject to electronic monitoring
14 under this subsection is not entitled to a credit for time served in a correctional facility

1 while the defendant is on probation. In this subsection, "correctional facility" has the
2 meaning given in AS 33.30.901.

3 * Sec. 2. AS 33.16.150 is amended by adding a new subsection to read:

4 (g) In addition to other conditions of parole imposed under this section for a
5 prisoner serving a sentence for an offense where the aggravating factor provided in
6 AS 12.55.155(c)(29) has been proven or admitted, the board shall impose as a
7 condition of special medical, discretionary, and mandatory parole a requirement that
8 the prisoner submit to electronic monitoring. Electronic monitoring under this
9 subsection must provide for monitoring of the prisoner's location and movements by
10 Global Positioning System technology. The board shall require a prisoner serving a
11 period of probation with electronic monitoring as provided under this section to pay all
12 or a portion of the costs of the electronic monitoring, but only if the prisoner has
13 sufficient financial resources to pay the costs or a portion of the costs. A prisoner
14 subject to electronic monitoring under this subsection is not entitled to a credit for
15 time served in a correctional facility while the defendant is on parole. In this
16 subsection, "correctional facility" has the meaning given in AS 33.30.901.

17 * Sec. 3. AS 12.55.100(f) and AS 33.16.150(g) are repealed December 31, 2012.

FISCAL NOTE

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STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 133
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title An Act relating to electronic monitoring of a gang RDU Administration and Operations
probationer. Component Statewide Probation & Parole
Sponsor Representatives Buch, Gruenberg, Holmes, Lynn
Requester House Judiciary Component No. 2826

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|------------------------|--------------|--------------|--------------|--------------|--------------|----------------|
| Personal Services | 107.8 | 215.6 | 323.4 | 431.3 | 539.1 | 646.9 |
| Travel | 2.0 | 4.0 | 6.0 | 8.0 | 10.0 | 12.0 |
| Contractual | 52.0 | 116.2 | 180.5 | 244.7 | 309.0 | 373.3 |
| Supplies | 13.1 | 15.5 | 17.9 | 20.3 | 18.9 | 21.3 |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 174.9 | 351.3 | 527.8 | 704.3 | 877.0 | 1,053.5 |

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| CAPITAL EXPENDITURES | | | | | | |
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|----------------------------------|-------------|-------------|-------------|--------------|--------------|--------------|
| CHANGE IN REVENUES (1156) | 22.5 | 51.7 | 81.0 | 110.3 | 139.6 | 168.9 |
|----------------------------------|-------------|-------------|-------------|--------------|--------------|--------------|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|--------------|--------------|--------------|--------------|--------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 152.4 | 299.6 | 446.8 | 594.0 | 737.4 | 884.6 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Receipt Supported Services 1156) | 22.5 | 51.7 | 81.0 | 110.3 | 139.6 | 168.9 |
| TOTAL | 174.9 | 351.3 | 527.8 | 704.3 | 877.0 | 1,053.5 |

Estimate of any current year (FY2007) cost: 00

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

| | 1 | 2 | 3 | 4 | 5 | 6 |
|-----------|---|---|---|---|---|---|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections (DOC) has based this fiscal note on a very conservative number of probationers that will be affected under passage of this legislation. The department anticipates a growth rate of approximately 15 new probationers each year. There are currently 96 offenders on probation that have gang related indicators, of these 36 are under intensive supervision. The DOC does not currently conduct a uniform assessment of offenders to identify gang related offenders. It is expected that the number of offenders in the system is much higher than currently identified. The Juvenile System currently has 50 probationers and 23 pending probationers that may fit under this legislation. This indicates that a higher number will need to be under supervision in the future by DOC than currently estimated. One probation officer will be necessary to supervise every 15 probationers on active, intensive GPS monitoring. Other states operating this program have (Continued on Page 2)

Prepared by: Sharleen Guffin, Director Phone: (907) 465-3339
Division: Administrative Services Date/Time: 2/28/07 9:06 AM
Approved by: Dwyana Preeplus, Deputy Commissioner Date: 2/28/2007
Agency: Department of Corrections



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT: HOUSE BILL 133

"An Act relating to requiring electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang."

Anchorage has seen an increase in gang violence in recent years. The Anchorage Police Department has entered 20 gang related crimes in 2007 alone. In 2006, the Police Department reported 122 gang-related cases.

This bill, which is a legislative priority for the municipality of Anchorage, addresses a problem that has been documented by the Anchorage Police Department and prosecutors where gang members who have been convicted of violent gang-related crimes go back to gang activity when they are released on probation.

HB 133 would require people who are convicted of violent, gang-related crimes to wear electronic monitoring devices as a condition of their probation. The bill will help law enforcement officials, through the use of technology in the form of ankle bracelets with global positioning systems, to monitor the movement of violent offenders, and supervise their activity.

The scope of HB 133 is narrowly defined. It applies only to those people who have been convicted of violent crimes that are proven in a court of law to be gang related. It would not be used on other offenders.

Office of Representative Bob Buch
House District 27
State Capitol, Room 430 / Juneau, Alaska 99801
907.465.4968 Office / 907.465.2040 Fax

ALASKA STATE LEGISLATURE

While in Session
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Juneau, Alaska 99801-1182
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Anchorage, Alaska 99501
(907) 269-0117
Fax: (907) 269-0119

REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: April 16, 2007

To: Representative Mike Hawker
House Finance Committee

From: Representative Bob Buch
Alaska State Legislature

Re: HB 133

Dear Representative Hawker:

This is to follow up on the questions you had about HB 133 (electronic monitoring of gang probationers and parolees) during Friday's House Finance committee meeting. I wanted to share with you some of the discoveries that were made during the House Judiciary Committee hearings on the bill. Many of the questions you raised were discussed in those hearings as well.

Many of the members of the House Judiciary committee initially shared your interest in expanding the bill to include more offenders. During their deliberations, however, they discovered some practical, fiscal and constitutional difficulties with this idea. They also discovered that expanding the scope wasn't necessary because the current system is already using electronic monitoring on some of the people they were hoping to bring under the bill's purview. Let me explain further:

There is currently an electronic monitoring program in the state of Alaska for non-violent offenders. Under this program, ankle bracelets are ordered by the court as a condition of bail when the offender is awaiting trial and after they are released from jail and put in a half-way house. There is no need to expand HB 133 to include these people because they are already being monitored.

The House Judiciary committee was also interested in expanding HB 133 to include violent, youth offenders who were not a part of a criminal street gang—so called "heinous hooligans." There were a number of problems with this. First, a practical problem: kids who commit heinous crimes such as murder and rape are auto-waved to adult court, and are then sent to prison for long periods of time. They won't be out of jail

for many years, so on a practical level, HB 133 won't apply to them simply because they won't be out on probation.

Second, there were constitutional problems with requiring electronic monitoring of juvenile offenders. You cannot impose bracelets on juvenile murderers, for example, unless you put them on adult murderers too. You have to define the punishment by the crime—not by the age, sex, race, etc. of the offender. The committee was careful to draft a bill that was constitutional so the program wouldn't get thrown out of court.

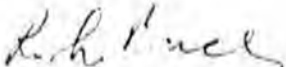
Third, there were serious fiscal problems with expanding the bill. If you require a bracelet for every violent crime, you are looking at a fiscal note that goes into the millions of dollars.

This discussion brought us back to another practical problem, and that is the usefulness of electronic monitoring. The key thing to keep in mind here is that electronic monitoring is a tool that works well for certain kinds of offenders, but not for others. It is particularly helpful in stopping "repeat" offenders. Not every murderer, for example, has a compulsion to murder again. However the same can not be said for sex offenders or gang members who traditionally have a high recidivism rate. This is why electronic monitoring is so useful for these populations—and less so for the average murderer. This is one of the reasons why the committee chose to limit the application of the bill. HB 133 attempts to use this technology on a population where it is known to be very effective. Doing this also makes the proposal affordable.

As I said in House Finance, I am proposing this as a pilot project. The five-year sunset provision gives us a chance to evaluate the program before committing any more resources to it. If it works well—we can keep it and increase it if necessary. If it doesn't, we can eliminate it. Until then, I think it is wise to proceed cautiously with the public's money.

I'd be happy to answer any other questions you might have. Thanks for your questions and for your consideration.

Sincerely,


Representative Bob Buch
Alaska State Legislature
House District 27

Cc: Members of the House Finance Committee

ALASKA STATE LEGISLATURE

While in Session
State Capitol
Juneau, Alaska 99801-1182
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While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0117
Fax: (907) 269-0119

REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

To: Representative Kevin Meyer, Co-Chairman
House Finance Committee

From: Representative Bob Buch

Re: CS for HB 133

Date: April 12, 2007

Dear Representative Meyer:

Attached you will find a CS for HB 133 which will be heard in the Finance Committee tomorrow. This CS clarifies that offenders who are put on electronic monitoring will pay for the cost of their ankle bracelets.

I am submitting this CS at the request of the Dept. of Corrections who realized this week that they did not have the receipt authority to accept funds from offenders who are out on probation or parole.

Currently, offenders who are put on GPS ankle bracelets in the state of Alaska are required to pay for their bracelets. The current receipt authority, however, is limited to offenders who are on electronic monitoring in lieu of jail time. Because gang members will not be put on bracelets instead of serving time, the Dept. needed a separate receipt authority for them.

The Dept. of Corrections will be available at the hearing tomorrow to answer any questions the committee might have about this.

Thank you for your consideration.

Sincerely,


Representative Bob Buch

25-LS0465V
Luckhaupt
4/12/07

CS FOR HOUSE BILL NO. 133()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUCH, Gruenberg, Holmes, Lynn, Roses, Crawford, Fairclough, Neuman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to requiring electronic monitoring as a special condition of probation**
2 **and parole for offenders whose offense was related to a criminal street gang."**

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

4 *** Section 1. AS 12.55.100 is amended by adding a new subsection to read:**

5 (f) While on probation and as a special condition of probation for an offense
6 where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or
7 admitted or the penalty for the offense was aggravated under AS 12.55.137, the court
8 shall require that the defendant submit to electronic monitoring. Electronic monitoring
9 under this section must provide for monitoring of the defendant's location and
10 movements by Global Positioning System technology. The court shall require a
11 defendant serving a period of probation with electronic monitoring as provided under
12 this section to pay all or a portion of the costs of the electronic monitoring, but only if
13 the defendant has sufficient financial resources to pay the costs or a portion of the
14 costs.

1 * Sec. 2. AS 33.16.150 is amended by adding a new subsection to read:

2 (g) In addition to other conditions of parole imposed under this section for a
3 prisoner serving a sentence for an offense where the aggravating factor provided in
4 AS 12.55.155(c)(29) has been proven or admitted or the penalty for the offense was
5 aggravated under AS 12.55.137, the board shall impose as a condition of special
6 medical, discretionary, and mandatory parole a requirement that the prisoner submit to
7 electronic monitoring. Electronic monitoring under this subsection must provide for
8 monitoring of the prisoner's location and movements by Global Positioning System
9 technology. The board shall require a prisoner serving a period of probation with
10 electronic monitoring as provided under this section to pay all or a portion of the costs
11 of the electronic monitoring, but only if the prisoner has sufficient financial resources
12 to pay the costs or a portion of the costs.

LEGAL SERVICES

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

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FAX (907) 465-2029
Mail Stop 3101

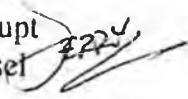
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 14, 2007

SUBJECT: HB 133 - Sectional Summary

TO: Representative Bob Buch

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 16.55.100 by adding a new subsection that requires electronic monitoring (with GPS location and tracking ability) as a special condition of probation for offenders whose offense involved a criminal street gang.

GPL:med
07-100.med

LEGAL SERVICES

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

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

MEMORANDUM

March 2, 2007

SUBJECT: Inclusion of Minors Prosecuted as Adults - CSIB 133()
(Work Order No. 25-LS0465\K)

TO: Representative Bob Buch

FROM: Gerald P. Luckhaupt *ERL*
Legislative Counsel

Enclosed is the bill draft you requested. I have one comment. Requiring electronic\GPS monitoring of minors prosecuted as adults under the automatic waiver provisions of AS 47.12.030 may be subject to challenge. Alaska uses a sliding scale approach to equal protection analysis.

Analysis under our state equal protection clause is considerably more fluid than under its federal counterpart. Instead of using three levels of scrutiny, we apply a sliding scale under which "the applicable standard of review for a given case is to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classification scheme." *State v. Ostrosky*, 667 P.2d 1184, 1192-93 (Alaska 1983). As the right asserted becomes "more fundamental" or the classification scheme employed becomes "more constitutionally suspect," the challenged law "is subjected to more rigorous scrutiny at a more elevated position on our sliding scale." *Id.*, at 1193. The importance of the asserted right and the suspectness of the classification scheme determine the ends-means scrutiny to be applied.

Our general approach is as follows:

As the level of scrutiny selected is higher on the [sliding] scale, we require that the asserted governmental interests be relatively more compelling and that the legislation's means-to-ends fit be correspondingly closer. On the other hand, if relaxed scrutiny is indicated, less important governmental objectives will suffice and a greater degree of over/or underinclusiveness in the means-to-ends fit will be tolerated.

Minimal scrutiny under our state constitution may be more demanding than under the federal constitution. As under the federal constitution, the

Representative Bob Buch

March 2, 2007

Page 2

challenged exclusion must be designed to achieve a "legitimate" governmental objective; however, the exclusion must bear a "fair and substantial" relationship to the accomplishment of the legitimate objective.

Department of Revenue v. Cosio, 858 P.2d 621, 629 (Alaska 1993). The legislature should identify the justification for this classification. Is a minor automatically waived into adult court any more dangerous than an 18 year convicted of the same or a greater crime?

GPL:med
07-141.med

Enclosure

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF JUVENILE JUSTICE

Sarah Palin, GOVERNOR

*P.O. BOX 110635
JUNEAU, ALASKA 99811-0635
PHONE: (907) 465-1382
FAX (907) 465-2333*

February 26, 2007

The Honorable Representative Jay Ramras
Alaska State Capitol, Room 118
Juneau, AK 99801

Dear Representative Ramras:

In last week's House Judiciary Hearing (2/21/07) on House Bill 133 (Electronic Monitoring for Gang Members) the following questions were posed regarding the Division of Juvenile Justice's management of electronic monitoring and gang members. Here are the questions with responses:

1.) What is the youngest person placed on Electronic Monitoring by the Division of Juvenile Justice? (Rep. Dahlstrom)

The youngest juveniles to be placed on Electronic Monitoring since the adoption in 2003 of a statewide policy and procedure regarding its use have been 12 years old, according to a review of Division data. Probation officers who have supervised these young offenders report that they typically had committed crimes against property or weapons offenses. Electronic monitoring was provided to these youth because their probation officers were concerned that the youth lacked adequate adult supervision.

2.) What are recidivism rates for gang members, and how do these compare with other youth? Are the crimes committed by juveniles involved in gangs more serious than others? (Rep. Holms)

As noted at the hearing, this question is difficult to answer because of the lack of data specific to gang membership and whether offenses are gang related. Intake officers are not always made aware of gang information when they receive police reports and do not have standardized definitions that clearly state when a youth should be considered a gang member or when an offense was specifically gang related. As a result, data the Division has collected about gang members should be considered anecdotal. Over the time period 2000-2006, 26 juveniles were referred to the Division of Juvenile Justice and noted by Division staff to have a gang affiliation. Of these, 15 were managed through the formal court process and placed on probation supervision (with or without custody) or in a secure juvenile treatment facility. Of these 15, 4 juveniles (27%) had committed a reoffense within 12 months of their release from supervision or treatment that resulted in a conviction or re-adjudication. This recidivism rate is approximately the same as for the Division's overall recidivism rate of 28% noted both for youth placed

on formal probation or in secure treatment facilities. Again, the small number of youth noted to have a gang affiliation dictate that this information should be considered anecdotal.

The 26 juveniles noted in the Juvenile Offender Management Information System were noted to have committed 39 offenses as follows: 18 (46.2%) were felonies, 9 (23.1%) were misdemeanors, 10 (25.6%) were probation violations, and 2 (5.1%) were other types of violations. Compared with all juveniles referred to the Division, the youth with gang affiliations were noted to have a higher percentage of offenses that were felonies compared with the general population of Alaska juveniles. For example, in FY 06, the percentage of offenses for all youth referred to DJJ that were felonies was 29.6%, with the percentage of misdemeanors 52.2%, probation violations 1.0%, and other violations 17.2% (out of a total of 5,713 offenses). These results suggest that youth with a gang affiliation commit more serious offenses than juveniles generally; however, again because of the small number of youth noted to have a gang affiliation, this information should be considered anecdotal at best.

Please let us know if we can be helpful in answering any other questions.

Sincerely,

A handwritten signature in cursive script that reads "Tony Newman". The signature is written in black ink and is positioned above the typed name.

Tony Newman
Social Services Program Officer



Municipality of Anchorage



3501 Dragage Street • Anchorage, Alaska 99507-1509 • Telephone (907) 783-8500 • <http://www.muni.org>

Mayor Mark Begich

Anchorage Police Department

February 12, 2007

Representative Bob Buch
State Capitol, Room 430
Juneau, Alaska 99801

Re: APD Support for Electronic Ankle Monitors

Dear Representative Buch:

As Chief of the Anchorage Police Department, I endorse the concept of electronic monitoring as a special condition of probation for offenders whose crimes were for the benefit of, at the direction of, or in association with a criminal street gang. This was a public safety priority contained in the Municipality of Anchorage's legislative package.

While the technology is no substitute for regular visits by human monitors, the combination of such visits with the electronic monitoring of the convicted person's movements and location will help ensure that conditions of probation are adhered to. Key to the employment of such devices will be the reasonableness that there is a clear link between the offense and the restriction. It is certainly reasonable to expect convicted violent gang members to keep authorities informed as to their whereabouts.

The fact that this bill uses the court as the deciding factor as to whether the threshold articulated in AS 12.55.155 (c)(29) and AS 12.55.137 was met ensures the defendant's due process rights are adhered to prior to requiring the defendant to submit to the electronic monitoring. As a Police Chief, it is important to me that such conditions of probation are determined after the case has been adjudicated.

Once again, I endorse the concept of electronic monitoring as a special condition of probation for individuals who have been convicted of a crime where the aggravating factors regarding criminal street gangs are proven.

Sincerely,

Rob Heun
Chief of Police

Community, Security, Prosperity

ALASKA STATE LEGISLATURE

While in Session
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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: March 13, 2007
To: Representative John Coghill
From: Representative Bob Buch
Re: Proposed Legislation

Dear John:

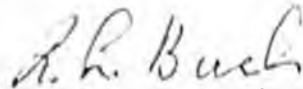
This is to follow up on your question about the language in HB 133 (electronic monitoring of gang probationers). In particular you had a question about the opening phrase "While on probation and as a special condition of probation ...etc."

I contacted Gerry Luckhaupt in Legal Services and asked him why the language of the bill was constructed in this manner, and if this could create some possible loophole in the future that lawyers could exploit.

Gerry said that this wording won't create loopholes; it simply creates clarity that electronic monitoring will be used for offenders on probation, as a special condition of their probation. He also said that this wording has been used before by the Legislature. By including it here, it will make our new subsection consistent with the wording and form of the statute that HB 133 is being added to (AS 12:55:100). I've attached a highlighted copy of the statute so you can see what he means.

I hope this addresses your concerns. Feel free to contact me if it doesn't, or if you have any other questions about the bill. I'm hoping to have this before the Judiciary Committee sometime in the next two weeks.

Thanks very much for your support. I appreciate it.


Representative Bob Buch
Alaska State Legislature
House District 27

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: March 14, 2007

To: Representative Nancy Dahlstrom

From: Representative Bob Buch

Re: Proposed Legislation (HB 133)

Dear Nancy:

This is to follow up on your questions about HB 133 (electronic monitoring of gang probationers and parolees). In particular you had questions about how the Dept. of Corrections would handle the contracting for the GSP technology, and about ending the program should it prove not to be effective or affordable.

I met with Dwayne Peebles, Deputy Commissioner of the Department of Corrections and Annie Carpeneti in the Department of Law to get the answers to your questions.

In regards to the contracting procedures for the GSP technology, Dwayne Peebles advised me that the Department of Corrections currently has a multi-year contract with BI Incorporated to provide the state of Alaska with electronic monitoring services. This contract was competitively bid in 2005. The effective dates of the state's contract with BI Incorporated are February 1, 2006-September 30, 2010 with provisions for annual amendments and renewals based on program needs. Should HB 133 be passed into law, the Department would implement electronic monitoring under their current contract.

I share your concerns about giving the state of Alaska an "out" should the electronic monitoring program prove to be ineffective or costly. To that end, I am proposing that we try electronic monitoring as a pilot project for a five year period in order to assess its effectiveness before making it a permanent program.

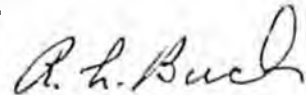
I originally proposed that we undertake it as a three year pilot project; however, both the Dept. of Law and the Dept. of Corrections thought that three years would not be enough time to assess the program because of the lag time it will take to get it going in the court system. Once the program becomes law, prosecutors will have to start using the gang provision as an aggravating factor in their prosecutions of felonies. This court process

alone can take up to a year, and sometimes even longer. If the prosecutors are successful, the convicted gang members will then do jail time for their felonies. (Depending on the particular crime, jail time will vary, but because these offenders are felons their jail time could be substantial). This means that the earliest we could see convicted gang members getting out of jail and being put on GSP monitoring, is 2-3 years away. If we sunset the bill after 3 years, we will not have had enough time or experience with GSP monitoring to assess whether or not it is working. Giving the bill a 5-year sunset provision would give us enough experience with the program to assess its effectiveness.

In light of this discussion, I have added a sunset provision to HB 133 so that the program would have to come before the Legislature in 2012 for review before it could be continued.

I hope this addresses your concerns. Feel free to contact me if you have any other questions about the bill. I'm hoping to have this before the Judiciary Committee sometime in the next two weeks.

Thanks very much for your support. I appreciate it.



Representative Bob Buch
Alaska State Legislature
House District 27

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Anchorage Daily News

[Print Page](#)[Close Window](#)**Gang-related crimes increase****ALASKA DIGEST***(Published: February 17, 2007)*

JUNEAU -- Anchorage police say gang-related crimes are on the rise, with 20 reports of violence or other crimes reported in January alone.

But while police say they are getting tougher on prosecuting gang members, keeping convicted gang members from returning to a life of crime has been a challenge.

Lawmakers are pushing legislation that would help police keep up with convicted gang members by requiring the use of electronic monitoring devices as a condition of their probation. Supporters of the bill say the use of bracelets with global positioning systems would help police supervise the activity of convicted gang members.

If the bill passes, the devices would be required for those convicted of gang-related violent crimes only, according to Rep. Bob Buch, D-Anchorage. The device would not be used in cases of gang members convicted of non-violent crimes, he said.

"The bill will give police a tool to keep tabs on gang members convicted of violent crime," Buch said. "But it won't give them a tool for rounding up every kid who comes home with a tattoo."

Implementing the use of the electronic devices would be easy for the state as it already uses the ankle bracelets for convicted sex offenders. The state currently has about 200 such monitoring devices, Buch said.

The bill, which has bipartisan support in the House, will be heard in a House Judiciary Committee hearing on Monday.

-- Anchorage Daily News

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FAIRBANKS POLICE DEPARTMENT

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Fairbanks, AK 99701-4616
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Alaska State Legislature
Juneau, AK 99801

RE: Senate Bill 89

March 2, 2007

Dear Members:

It has come to my attention that Senate Bill 89, *Electronic Monitoring of Gang Probationers*, is currently under consideration. I would like to add my voice in strong support of this legislation.

While Fairbanks currently does not experience the scope and extent of gang violence that has been evidenced in Anchorage, I'm somewhat concerned that it is only a matter of time before such activity migrates northward.

We need to act swiftly to deter gang activity and its associated violence, before this problem becomes entrenched throughout Alaska. Senate Bill 89 provides a positive step in keeping those who have been convicted of gang-related crimes of violence from returning to- and associating with- other gang members upon release from prison. Common sense dictates that such associations will likely lead to repeated negative (and often violent) behavior.

Please feel free to call me if you would like to discuss this issue further.

Sincerely,

A handwritten signature in black ink that reads "Daniel P. Hoffman".

Daniel P. Hoffman, Chief
Fairbanks Police Department

2007 STATE LEGISLATIVE PROGRAM
MUNICIPAL PRIORITY ISSUES

Legislation

Public Safety

ISSUE/PROJECT NAME: Require Monitoring Devices For Violent Youth Offenders

PRIORITY: 2

ISSUE/PROJECT DESCRIPTION:

Criminal activity by youth and members of criminal street gangs has increased in Alaska in recent years. The Municipality of Anchorage has several initiatives to prevent and crack down on youth and gang violence, launching a five-part anti-gang effort in June 2005. That includes the Anchorage Police Department reinstating its special gang unit, seeking greater citizen involvement, holding a gang summit with the U.S. Attorney's Office and hiring two prosecutors to work in partnership with federal prosecutors on gang violence.

These efforts have produced some progress. In 2006, the special APD anti-gang unit arrested 121 people on 101 state felony charges, six federal charges and 70 misdemeanor charges, confiscated 63 guns and seized 22 batches of drugs.

However, a particular problem documented by APD and prosecutors is that certain offenders released on probation encourage continued gang activity.

The purpose of this amendment is to use advanced technology to monitor the movements of these offenders who have been released on probation. The Municipality requests that the legislature amend AS 12.55 to provide that the court shall impose as a condition of probation a requirement that a defendant against whom an aggravating circumstance under AS 12.55.155(c)(29)(commission of crime for benefit of, at direction of or in association with criminal street gang) has been proven, or who is subject to the provisions of AS 12.55.137(misdemeanors treated as higher offense if committed for benefit of, at direction of or in association with criminal street gang) be supervised by means of electronic monitoring using a global positioning system.

Legislative District (s):

House: 99

Senate: A

CONTACT PERSON: James Reeves, Municipal Attorney, 343-4534

differs from probation granted after the court suspends the imposition of any sentence under AS 12.55.085(a). *Tiedeman v. State*, 576 P.2d 114 (Alaska 1978).

Where the court actually imposed sentence and suspended the execution of a portion thereof, the only statutory limitation on the term of probation is that contained in subsection (c) of this section. *Tiedeman v. State*, 576 P.2d 114 (Alaska 1978).

Where probation is granted after the court suspends the imposition of any sentence, the legislature has specifically limited the period of probation to a term not to exceed the maximum sentence which could be imposed for the particular offense. *Tiedeman v. State*, 576 P.2d 114 (Alaska 1978).

The five-year limitation contained in subsection (c) applies only to the period of probation to be served after the imposition of a sentence and suspension of all or a portion thereof pursuant to AS 12.55.080. *Elstad v. State*, 599 P.2d 137 (Alaska 1979).

When probation period begins. — Where the judgment clearly stated that the defendant's probation was to expire five years after the defendant was released from incarceration, the only possible interpretation of this language was that the defendant's probation was to expire five years after he was released from prison on parole. *Tarbell v. State*, 860 P.2d 1290 (Alaska Ct. App. 1993).

Tolling of period. — The five-year time limit for probation under subsection (c) of this section is suspended when a probationer terminates supervision by leaving the state without permission or by severing contacts with supervising authorities. *O'Shea v. State*, 683 P.2d 286 (Alaska Ct. App. 1984).

The running of probation is tolled by the filing of a petition to revoke probation. *Gage v. State*, 702 P.2d 646 (Alaska Ct. App. 1985).

Revocation of probation before the probationary term begins does not impermissibly extend the term in violation of subsection (c), which limits the total period of probation to five years. *Enriquez v. State*, 781 P.2d 578 (Alaska Ct. App. 1989).

Period during which suspended sentence may be revoked. — When the Alaska legislators provided

in AS 12.55.080 that a court "may suspend the imposition or execution . . . of the sentence . . . and place the defendant on probation . . ." the period during which a suspended sentence may be revoked is subject to the same five-year restriction as the period of probation. *Jackson v. State*, 541 P.2d 23 (Alaska 1975).

Revocation for offense discovered after probationary period has run. — Where a defendant is convicted of an offense and placed on probation for two years and commits a further offense within the two-year period which is not discovered by the division of corrections until after the two-year period runs, the trial court may revoke probation so long as the petition to revoke probation was filed within the five-year maximum probation period authorized by statute. *Galaktionoff v. State*, 733 P.2d 628 (Alaska Ct. App. 1987).

Period of probation already served. — In calculating the five-year period of probation allowable under subsection (c), the court was not bound to consider the period of probation already served by defendant under its original order suspending the imposition of sentence pursuant to AS 12.55.085(a). *Elstad v. State*, 599 P.2d 137 (Alaska 1979).

The five-year limitation contained in subsection (c) applies only to the period of probation to be served after the imposition of a sentence and suspension of all or a portion thereof pursuant to AS 12.55.080. Thus, the superior court is not bound to credit the period already served under its original order suspending imposition of sentence pursuant to AS 12.55.085(a), when considering the maximum sentence or period of probation it can impose under AS 12.55.085(c) upon violation of the original probation conditions. *Rice v. State*, 603 P.2d 913 (Alaska 1979).

Where a petition to revoke probation formally charging a probationer with committing a violation is filed and the court subsequently determines that the alleged violation was in fact committed, there can be no legitimate justification for allowing the probationer to claim credit for time served on probation during the period between the filing of the petition and its ultimate adjudication. *Gage v. State*, 702 P.2d 646 (Alaska Ct. App. 1985).

Collateral references. — State court's power to place defendant on probation without imposition of sentence. 56 ALR3d 932.

Sec. 12.55.100. Conditions of probation. (a) While on probation and among the conditions of probation, the defendant may be required

- (1) to pay a fine in one or several sums;
- (2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had, including compensation to a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime;
- (3) to provide for the support of any persons for whose support the defendant is legally responsible;
- (4) to perform community work in accordance with AS 12.55.055;
- (5) to participate in or comply with the treatment plan of an inpatient or outpatient rehabilitation program specified by either the court or the defendant's probation officer that is related to the defendant's offense or to the defendant's rehabilitation; and

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702 P.2d 646

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(6) to satisfy the screening, evaluation, referral, and program requirements of agency authorized by the court to make referrals for rehabilitative treatment or provide rehabilitative treatment.

(b) The defendant's liability for a fine or other punishment imposed as to will probation is granted shall be fully discharged by the fulfillment of the terms conditions of probation.

(c) A program of inpatient treatment may be required by the authorized agency or (a)(6) of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred to inpatient treatment may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(d) If the court orders probation for a defendant convicted of an offense requiring the state to collect a blood sample, oral sample, or both, from the defendant for the deoxyribonucleic acid identification registration system under AS 44.41.035, the court shall order the defendant, as a condition of probation, to submit to the collection of

(1) the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples; or

(2) an oral sample when requested by a juvenile or adult correctional, probation or parole officer, or a peace officer.

(e) [Effective July 1, 2007.] While on probation and as a condition of probation for a sex offense, the defendant shall be required to submit to regular periodic polygraph examinations. In this subsection, "sex offense" has the meaning given in AS 12.63.100. (§ 8.10 ch 34 SLA 1962; am § 13 ch 166 SLA 1978; am § 3 ch 104 § 1984; am § 13 ch 138 SLA 1986; am § 1 ch 26 SLA 1989; am §§ 3, 4 ch 188 SLA 1998; am § 6 ch 95 SLA 1998; am § 3 ch 44 SLA 2000; am § 2 ch 26 SLA 2003; am § 3 ch SLA 2006)

Effect of amendments. — The 1998 amendment, effective September 10, 1998, added subsection (d).

The 2000 amendment, effective May 12, 2000, added paragraph (d)(2) and made related stylistic changes.

The 2003 amendment, effective August 26, 2003, in paragraph (d)(2) added the language beginning "including" to the end of the paragraph.

The 2006 amendment, effective July 1, 2007, added subsection (e).

Editor's notes. — Section 5, ch. 26, SLA 1989,

provides that the amendments to (a) of this section § 1, ch. 26, SLA 1989 "do not affect the collective probation fee payments ordered by a court under AS 12.55.105, repealed by § 4 of this Act, after June 1986, and before May 12, 1989."

Section 15, ch. 95, SLA 1998 provides that the enactment of subsection (d) applies "to offenses committed before, on, or after September 10, 1998."

Section 13, ch. 14, SLA 2006, provides that subsection (e) applies "to persons on probation or parole for offenses committed before, on, or after July 1, 2007."

NOTES TO DECISIONS

- I. General Consideration.
- II. Fines.
- III. Restitution.

I. GENERAL CONSIDERATION.

Making flawed probation condition more lenient. — Where the sentencing court failed to specify punishment in subsection (a) the maximum length of time that the defendant was to spend in residential treatment for her alcohol problem as a condition of her probation, the judge, subsequent to setting the maximum length of residential treatment at 90 days constituted an increase in the defendant's sentence violating the constitutional prohibition against double jeopardy. An illegal sentence should not be increased unless absolutely necessary to

be increased by striking the flawed portion of the probation order. See, *Christensen v. State*, 841 P.2d 1224 (Alaska Ct. App. 1995).

A court may modify probation to the defendant without violating the double jeopardy clause when the applicable statutes authorize modification, as they do when the court finds that defendant has violated probation; but, once sentence is meaningfully imposed, a sentencing court does not have the power to alter probation to the defendant simply because the court comes to feel that a longer probationary term or more onerous

impose an affirmative burden on those subject to registration as a consequence of past conduct. *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994), reversed on other grounds, sub nom., *Doe v. Otte*, 248 F.3d 832 (9th Cir. 2001).

The discussion of whether the sanction of the Registration Act, ch. 41, SLA 1994, entails an affirmative disability or restraint, whether the sanction has historically been regarded as punitive, whether the sanction depends upon a finding of scienter, whether the sanction will operate to promote traditional punishment objectives, whether the sanction applies to behavior which is already a crime, whether there is an alternative non-punitive purpose for the sanction, and whether the sanction is excessive in relation to the alternative purpose, see *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994), reversed on other grounds, sub nom., *Doe v. Otte*, 248 F.3d 832 (9th Cir. 2001).

The Registration Act, ch. 41, SLA 1994, is likely to violate the prohibition on ex post facto legislation, because the law includes a provision providing for public dissemination of information concerning sex offenders whose convictions antedate the Registration Act. *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994), reversed on other grounds, sub nom., *Doe v. Otte*, 248 F.3d 832 (9th Cir. 2001).

Because the Registration Act, ch. 41, SLA 1994, is

likely penal in nature because of the provision for public dissemination of information, plaintiffs are likely to prevail on their assertion that the bargains that did not include any duty to register, agreements and due process. *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994), reversed on other grounds, sub nom., *Doe v. Otte*, 248 F.3d 832 (9th Cir. 2001).

Sex offenders required to register with police authorities were not likely to prevail on their assertion that the Registration Act, ch. 41, SLA 1994, and specifically the requirement to submit oneself to the state troopers or local police for photographs and fingerprinting, was an unreasonable search or seizure. *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994), reversed on other grounds, sub nom., *Doe v. Otte*, 248 F.3d 832 (9th Cir. 2001).

Sex offenders required to register with police authorities do not appear to be able to establish a reasonable expectation of privacy in the information required to be disclosed by the Registration Act, ch. 41, SLA 1994. *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994), reversed on other grounds, sub nom., *Doe v. Otte*, 248 F.3d 832 (9th Cir. 2001).

Stated in *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003).

Sec. 12.55.151. Court may not reduce or mitigate punishment based on victim's failure to appear or testify. Notwithstanding another provision of law, when sentencing a defendant, a court may not mitigate or reduce the punishment of the defendant based on, or otherwise consider as a mitigating factor or reason to impose a lesser punishment, the failure of the crime victim to appear or testify. (§ 13 ch 92 SLA 2001)

Effective dates. — Section 49, ch. 92, SLA 2001 makes this section effective July 1, 2002.

Sec. 12.55.155. Factors in aggravation and mitigation. (a) Except as provided in (e) of this section, if a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and

(1) the low end of the presumptive range is four years or less, the court may impose any sentence below the presumptive range for factors in mitigation or may increase the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation;

(2) the low end of the presumptive range is more than four years, the court may impose a sentence below the presumptive range as long as the active term of imprisonment is not less than 50 percent of the low end of the presumptive range for factors in mitigation or may increase the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation.

(b) Sentences under this section that are outside of the presumptive ranges set out in AS 12.55.125 shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 — 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, "incapacitated" has the meaning given in AS 11.41.470;

(31) the defendant's prior criminal history includes convictions for five or more crimes in this or another jurisdiction that are class A misdemeanors under the law of this state, or having elements similar to a class A misdemeanor; two or more convictions arising out of a single continuous episode are considered a single conviction; however, an offense is not a part of a continuous episode if committed while attempting to escape or resist arrest or if it is an assault upon a uniformed or otherwise clearly identified peace officer; notice and denial of convictions are governed by AS 12.55.145(b), (c), and (d);

(32) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900;

(33) the offense was a felony specified in AS 11.41.410 — 11.41.455, the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the victim to a risk or a fear that the offense could result in the transmission of HIV or AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in AS 18.15.310.

(d) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence below the presumptive range set out in AS 12.55.125:

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

AS 12.55(c)(29) →

tions as described in the subsection "whether the convictions occurred before, on, or after June 3, 2006." Section 22, ch. 53, SLA 2006, provides that subsec-

tion (j) applies "to offenses committed on or after June 3, 2006."

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — See notes under same heading, AS 12.55.125. *Nell v. State*, 642 P.2d 1361 (Alaska Ct. App. 1982).

Maximum sentence for joyriding justified. — The district court judge was not clearly mistaken in characterizing a defendant as a worst offender, and in imposing the maximum sentence of one year for third-degree criminal mischief (joyriding). Despite the limited period of time in which the defendant committed the offenses, the defendant's record, coupled with the especially serious nature of the particular joyriding offenses, i.e., that it was committed in order to perpetrate a felony, justifies the sentence imposed. *Plant v. State*, 724 P.2d 536 (Alaska Ct. App. 1986).

Sentence upheld. — Composite sentence of 24 months with six months suspended for refusal to submit to a chemical breath test and for driving with a suspended operator's license was affirmed where the defendant had five prior driving while intoxicated convictions and at least four prior driving with suspended license convictions and was on probation for a prior driving while intoxicated and driving with suspended license conviction. *Witt v. State*, 692 P.2d 976 (Alaska Ct. App. 1984).

Consecutive sentencing by district court permissible under former law. — See *State v. Pete*, 420 P.2d 338 (Alaska 1966), decided under former AS 11.05.010.

Sentence disapproved. — Trial court's sentencing decision was clearly mistaken where the sentence

fell near the bottom of the authorized range of sentences for fourth-degree assault and the evidence concerning defendant's background and personal characteristics provided little basis for characterizing his case as particularly mitigated, including two prior misdemeanor convictions. *State v. Huletz*, 938 P.2d 1257 (Alaska Ct. App. 1992).

The sentencing court did not find defendant's prospects for rehabilitation particularly favorable, or that her conduct was in any respect less serious than normal for a class B felony, or that insubstantial harm resulted, yet the total sentence received was palpably more lenient than the norm for similarly situated offenders. In the absence of actual conflict among the goals, emphasizing a single sentencing goal can never be justified to the exclusion of others. Thus, defendant's lenient sentence unduly depreciated the seriousness of her criminal misconduct. *State v. Hernandez*, 877 P.2d 1309 (Alaska Ct. App. 1994).

Applied in *Ostrosky v. State*, 725 P.2d 1087 (Alaska Ct. App. 1986); *Purcella v. State*, 765 P.2d 114 (Alaska Ct. App. 1988); *Hazelwood v. State*, 962 P.2d 196 (Alaska Ct. App. 1998).

Stated in *Doe v. Dep't of Public Safety*, 92 P.3d 398 (Alaska 2004).

Cited in *Law v. State*, 624 P.2d 284 (Alaska 1981); *Kelly v. State*, 663 P.2d 967 (Alaska Ct. App. 1983); *State v. Waalkes*, 749 P.2d 1360 (Alaska Ct. App. 1988); *Smith v. State*, 756 P.2d 913 (Alaska Ct. App. 1988); *Stewart v. State*, 763 P.2d 515 (Alaska Ct. App. 1988); *Sorenson v. State*, 938 P.2d 1084 (Alaska Ct. App. 1997).

Collateral references. — Paroled or expunged conviction as "prior offense" under state statute or

regulation enhancing punishment for subsequent conviction. 97 ALR5th 293.

Sec. 12.55.137. Penalties for gang activities punishable as misdemeanors.

(a) If a person commits an offense that would be a class B misdemeanor and the person committed the offense for the benefit of, at the direction of, or in association with a criminal street gang, the offense is a class A misdemeanor.

(b) If a person commits an offense that would be a class A misdemeanor and the person committed the offense for the benefit of, at the direction of, or in association with a criminal street gang, the offense is a class C felony. (§ 8 ch 60 SLA 1996)

Effective dates. — Section 13, ch. 60, SLA 1996 makes this section effective September 1, 1996.

Sec. 12.55.139. Penalties for criminal nonsupport. (a) In addition to other penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the court may suspend, restrict, or revoke, for the period during which the arrangement continues to exist, a recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

(b) In addition to other penalties imposed for the offense of aiding the nonpayment of child support in the first degree under AS 11.51.121 and for the offense of aiding the nonpayment of child support in the second degree under AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed one year, a recreational license as

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AS 11.81.900

- (4) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;
- (5) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;
- (6) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);
- (7) "conduct" means an act or omission and its accompanying mental state;
- (8) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);
- (9) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;
- (10) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;
- (11) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;
- (12) "crime involving domestic violence" has the meaning given in AS 18.66.990;
- (13) "criminal street gang" means a group of three or more persons
- (A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and
- (B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:
- (i) AS 11.41; - offenses against person
- (ii) AS 11.46; or - offenses against property
- (iii) a felony offense;
- (14) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;
- (15) "dangerous instrument" means
- (A) any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury; or
- (B) hands or other objects when used to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or mouth;

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NOTES TO DECISIONS

No due process violation found. — Because single hearing officers were not in Alaska case law presumed to be biased in prison disciplinary proceedings, and because defendant offered no specific allegations of bias or an explanation of why a high-moderate infraction of possession of tobacco in violation of AS 33.30.015 and 22 AAC 05.400(c)(7) required adjudication by a committee instead of a single hearing officer,

he did not show a violation of his Alaska constitutional right to an impartial factfinder under Alaska Const. art. I, § 7 as was required for a reversal under AS 33.30.295. *Brandon v. Dep't of Corrections*, 73 P.3d 1230 (Alaska 2003).

Cited in *Hertz v. State*, 22 P.3d 895 (Alaska Ct. App. 2001).

Secs. 33.30.300 — 33.30.900. Crime against convict in penitentiary. [Repealed, § 12 ch 88 SLA 1986.]

Sec. 33.30.901. Definitions. In this chapter, unless the context requires otherwise,

- (1) "center" means a correctional restitution center;
- (2) "commissioner" means the commissioner of corrections;
- (3) "community service" means work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public services, lands, forests, parks, roads, highways, facilities, or education; community service may not confer a private benefit on a person except as may be incidental to the public benefit;
- (4) "correctional facility" or "facility" means a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners; a "state correctional facility" means a correctional facility owned or run by the state;
- (5) "court" means the supreme court, the court of appeals, the superior court, the district or magistrate court, or a justice or judge of a court;
- (6) "crime against a person" means a crime as set out in AS 11.41, or a crime against a person in this or another jurisdiction having elements substantially identical to those of a crime as set out in AS 11.41;
- (7) "crime involving domestic violence" has the meaning given in AS 18.66.990;
- (8) "department" means the Department of Corrections;
- (9) "furlough" means an authorized leave of absence from actual confinement for a designated purpose and period of time;
- (10) "health care provider" means
 - (A) a physician assistant or nurse practitioner licensed to practice in the state and working under the direct supervision of a licensed physician or psychiatrist; or
 - (B) a mental health professional as defined in AS 47.30.915;
- (11) "municipality" means a municipality authorized by law to establish a correctional facility;
- (12) "prisoner"
 - (A) means a person held under authority of state law in official detention as defined in AS 11.81.900(b);
 - (B) includes a minor committed to the custody of the commissioner when,
 - (i) under AS 47.12.030, 47.12.065, or 47.12.100, the minor has been charged, prosecuted, or convicted as an adult; or
 - (ii) under AS 47.12.160(e), the minor has been ordered transferred to the custody of the commissioner;
- (13) "sex offender or child kidnapper," "sex offense," and "child kidnapping" have the meanings given in AS 12.63.100;
- (14) "temporary commitment" means detention of a person for any period under authority of state law, but does not include confinement upon conviction and judgment of a court of this state;
- (15) "victim" has the meaning given in AS 12.55.185. (§ 6 ch 88 SLA 1986; am § 23 ch 59 SLA 1989; am § 9 ch 41 SLA 1994; am § 4 ch 113 SLA 1994; am § 62 ch 64 SLA 1996; am § 23 ch 106 SLA 1998; am § 5 ch 107 SLA 1996)

perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise:

(1) "access device" means a card, credit card, plate, code, account number, algorithm, or identification number, including a social security number, electronic serial number, or password, that is capable of being used, alone or in conjunction with another access device or identification document, to obtain property or services, or that can be used to initiate a transfer of property;

(2) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(3) "animal" means a vertebrate living creature not a human being, but does not include fish;

(4) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(5) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(6) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(7) "conduct" means an act or omission and its accompanying mental state;

(8) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(9) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(10) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(11) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(12) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(13) "criminal street gang" means a group of three or more persons

(A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and

(B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:

(i) AS 11.41;

(ii) AS 11.46; or

(iii) a felony offense;

(14) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(15) "dangerous instrument" means

(A) any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury; or

(B) hands or other objects when used to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or mouth;

(16) "deadly force" means force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or



22 AAC 05.620. Prisoner responsibilities for electronic monitoring services

(a) Except as provided in (b) and (h) of this section, the department will assess a prisoner who is designated to serve a term of imprisonment or period of temporary confinement, or a part of the term or period, by electronic monitoring a fee of \$12 per day to pay the costs of the monitoring.

(b) A prisoner who believes that making full payment for electronic monitoring would cause undue hardship may request the prisoner's probation officer to make a determination of undue hardship. The prisoner, subject to the penalties for unsworn falsification under AS 11.56.210, shall certify on a form provided by the department, that full payment would cause undue hardship and state what amount, if any, the prisoner can pay. The prisoner's probation officer shall determine in writing whether undue hardship exists and the amount the prisoner must pay, after considering the factors set out in (c) of this section. If requested to do so by the prisoner's probation officer, a prisoner shall submit copies of income tax records and other records needed to substantiate information provided by the prisoner and shall sign a release authorizing the department to obtain such records.

(c) The prisoner's probation officer shall make a determination that undue hardship exists if, after considering the prisoner's income, property owned, other assets, and outstanding obligations, the number and ages of the prisoner's dependents, and similar factors, the probation officer determines that the prisoner is unable financially to provide for the basic needs, including food, shelter, utilities, and health care, of the prisoner and the prisoner's dependents.

(d) A prisoner whom the department determines must make full payment to participate in electronic monitoring may request a determination of undue hardship from the prisoner's probation officer if the prisoner subsequently has a significant change in circumstances that affects the prisoner's ability to make full payment.

(e) If the prisoner pays less than full payment for electronic monitoring or requests a determination of undue hardship based on a significant change of circumstances, the prisoner shall report on a weekly basis to the prisoner's probation officer any significant changes in circumstances that occur in the prisoner's ability to make full or partial payment.

(f) A prisoner who disagrees with a probation officer's determination under (b) of this section as to undue hardship or the amount of payment may appeal the probation officer's determination to the deputy commissioner by submitting a written appeal through the prisoner's probation officer within five days of receipt of the determination. The notice of appeal must be submitted on a form provided with the determination, and must contain a statement of the reasons upon which the appeal is based. The deputy commissioner shall respond to the appeal within 15 working days of receipt. Failure of the deputy commissioner to respond within 15 working days must be considered a denial of the appeal. However, a late response granting an appeal is valid. The deputy commissioner's decision is the final administrative action.

(g) Except as provided in (h) of this section, a prisoner who is required to pay less than full payment for electronic monitoring shall pay the department the difference between the amount of full payment and the amount the prisoner was required to pay, if the department subsequently determines that full payment would not have caused undue hardship for the prisoner. The department will base its determination upon the discovery of

- (1) additional information about the prisoner's financial circumstances;
 - (2) fraud, misrepresentation or other misconduct by a person who provided information relating to the initial determination of undue hardship; or
 - (3) a clerical or mathematical mistake arising from an oversight or omission by the department.
- (h) The department will, in its discretion, require a prisoner on electronic monitoring to use an alcohol breath monitor as a component of electronic monitoring. Full payment for a prisoner who is required to use an alcohol breath monitor as a component of electronic monitoring is \$14 per day.
- (i) In this section, unless the context requires otherwise, "dependent" has the meaning set out at 26 U.S.C. 152 (Internal Revenue Code), revised as of February 25, 1999, and adopted by reference.

History: Eff. 4/2/99, Register 149

Authority: AS 33.30.065

22 AAC 05.660. Definitions

(a) In this chapter, unless the context requires otherwise,

- (1) "administrative segregation" means a form of separation from the general facility population, in accordance with 22 AAC 05.485, if the continued presence of a prisoner in the general population would be a serious threat to life, property, self, staff, other prisoners, or the security or orderly administration of the facility; "administrative segregation" does not include maximum custody housing under 22 AAC 05.271;
- (2) "administrative transfer" means the transfer of a prisoner between facilities for any purpose related to an emergency or potentially hazardous situation or to facilitate an administrative action that can be more efficiently accomplished at another facility, such as parole hearing, court action, medical or mental health treatment, military tribunal, family emergency, or population management;
- (3) "admission" means the administrative process of accepting a prisoner into an adult correctional facility;
- (4) "assistant superintendent" means the deputy chief administrator of an adult correctional facility or any employee of the department designated by the assistant superintendent, superintendent, regional director, deputy commissioner or the commissioner to carry out an official function of the assistant superintendent;
- (5) "body cavity search" means the intrusive manual, mechanical, or instrument examination of a person's body appendages and openings by medical personnel;
- (6) "central classification" means the staff in the department responsible for system-wide classification and coordination, or any employee of the department designated by the commissioner or deputy commissioner to carry out any official function relating to system-wide classification and coordination;
- (7) "classification form" means the form used to provide specific guidelines for the review and

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Teen gunfire signals return of gang rivalry

MULDOON: Two hurt in weekend incident; hero in 2001 Mountain View school attack arrested.

By MEGAN HOLLAND
Anchorage Daily News

(Published: April 17, 2007)

A gun battle early Saturday morning in residential Muldoon that left two teenagers seriously injured was between rival gangs, according to court documents filed by prosecutors.

The shooting was the second in two days and the first known gang-related activity in months in Anchorage. Police have said the winter months kept the violence at bay but now that it is warming up, residents should expect to see an increase as young people start cruising the streets and renewing old rivalries.

The documents say that on Saturday at about 3 a.m., members of one unnamed gang were at a house party on Friendly Lane, hanging out outside, when five vehicles pulled up to the multiplex. In the vehicles were members of "Soulja's Crew," a local street gang that has been involved with previous clashes around town over the past several years.

Soulja's Crew members in the vehicles told the partygoers that they wanted to fight -- no weapons, just fists, the documents say. But a male named "Hollywood" put a stop to it; he didn't want the cops called.

As the vehicles pulled away, Kevin Bruno, who was in the passenger seat of a dark-colored pickup, fired a handgun several times, taking aim at those outside the residence, witnesses later told police. Someone with a shotgun fired back at Bruno. Between six and a dozen shots were fired in all.

A female victim was hit in the groin by a 9 mm bullet. A male victim was shot in the torso.

Bruno fled, the documents say. He turned himself in Saturday afternoon after a warrant was issued for his arrest. Bruno, 18, was hailed as a child hero six years ago when he helped stop an attacker from stabbing classmates at Mountain View Elementary School. He was also involved in the Anchorage Football Stadium shooting last July when he fired back at the initial shooters. Police called him a victim in that case.

The Saturday shooting followed another one Friday morning that left a 19-year-old injured. A gunman shot the teenager outside a Spenard residence, then fled in a white SUV. Police have not said whether they believe that was gang-related. No one has been arrested.

Deputy police chief Ross Plummer said last week, before either shooting occurred, that the department's efforts to curb youth violence in the past two years have not stopped it. He said he expects more gang activity in coming months.

Police have arrested and jailed gang members, but turning the tide will not be easy, he said. Anchorage's gang problems mirror a surge across the country.

Police say they know of 19 street gangs in Anchorage with a total of about 140 members and another 100 associates. There may be others, but these are the ones they are tracking.

"I'm not naïve enough to think that we've made so much of a difference that it's gone and that we're not going to have incidents. We are," Plummer said. "We're still fighting it and we're not letting up."

Daily News reporter Megan Holland can be reached at mrholland@adn.com.

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