

HB

90



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 16, 2007

To: Representative Kevin Meyer
Co-Chairman House Finance Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File HB90

Attached please find the following documents to the Referral File for HB90:

- CSH 90(JUD) 25-LS0331\A
- House Judiciary Amendments 1-8
- Sponsor Statement
- House Judiciary Committee Report
- Fiscal Notes
 - LAW
 - ADM, PD
 - COR
 - COR
 - COR
 - ADM, OPA
- Sectional Analysis
- HB90 (25-LS0331\C)
- Support
- Applicable Statutes

ADOPT

Amendment #

1

By Rep. Samuels

Offered in the House Judiciary Committee
To: CSHB90()

Page 2, line 16
(A) sexual penetration;

Page 4, line 28
for court review; and

Page 5, line 1
spent in a [AN] private residence...

Page 6, line 5
Applications based on claim of ineffective assistance of counsel.

ADOPT

Amendment # 2
By Rep. Samuels

Offered in the House Judiciary Committee
To: CSHB90()

Page 3, after line 7
(4) hindering prosecution of murder;
Renumber accordingly

ADOPT

Amendment # 3
By Rep. Samuels

Offered in the House Judiciary Committee
To: CSHB90()

Page 3, line 16

(j)...unless the prosecuting authority stipulates otherwise or a defendant has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the defendant is being held, a judicial officer may not...

ADOPT

Amendment # 4
By Rep. Samuels

Offered in the House Judiciary Committee
To: CSHB90()

Page 5, lines 3 and 4: delete all material and insert:

- (c) Period of probation, together with any extension, may not exceed
(1) except as provided in (2) of this section, 10 years;
(2) for a person convicted of a felony sex offense, 25 years.

ADOPT

Amendment # 5
By Rep. Samuels

Offered in the House Judiciary Committee
To: CSHB90()

Page 1, between lines 12 and 13

(a) A person commits the crime of violation by sex offender of condition of probation or parole if the person

(1) is on probation or parole for conviction of a sex offense;

(2) has served the entire term of incarceration imposed for conviction of the sex offense; and

(3) either

ADOPT

Amendment # 6
By Rep. Samuels

**Offered in the House Judiciary Committee
To: CSHB90()**

Page 4, line 24

(2) must be confined at all times to the grounds of the facility or be in the physical custody of an employee of the facility, except for court appearances or meetings with counsel;

ADOPT

25-LS0331K.2
Luckhaupt
4/13/07

AMENDMENT # 7

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 90(), Draft Version "K"

- 1 Page 4, line 28, following "review;":
- 2 ~~Insert "and"~~
- 3
- 4 Page 5, line 1:
- 5 ~~Delete "an"~~
- 6 ~~Insert "a"~~
- 7
- 8 Page 6, line 5, following "ineffective":
- 9 ~~Insert "assistance of"~~
- 10
- 11 Page 6, line 7:
- 12 Delete "applicant's attorney"
- 13 Insert "assistance the applicant's attorney provided"

This is duplicative of Amend # 1, except for
lines 11 - 13

ADOPT

25-LS0331/K.1
Luckhaupt
4/12/07

AMENDMENT # 8

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 90(), Draft Version "K"

1 Page 4, line 25, following "facility":

2 Insert "unless the person is at work or traveling to or from work" *as required*
by the treatment program and *as approved by the*
Court for credit.

This amendment is to follow Amendment # 6

Representative Ralph Samuels

Sponsor Statement CS for House Bill 90

“An Act relating to credit toward service of a sentence of imprisonment; relating to violation of probation and parole conditions by sex offenders; relating to bail; relating to distribution of certain materials to minors; relating to time limitations for prosecution of certain crimes; relating to sex offender registration; relating to the maximum time for probation; relating to certain post-conviction relief applications; relating to good time; and providing for an effective date.”

HB90 encompasses a wide variety of issues relating to our legal, correctional and public safety systems. Following are the specific changes:

1. Currently, there are very few tools law enforcement and public safety have in requiring that sex offenders, who are on probation or parole, comply with the conditions of their release. HB 90 will provide for a class A misdemeanor if a person violates certain conditions of their probation or parole.
2. Under current law, it is a crime to send indecent materials, if the materials depict minors, to minors. I believe that sending indecent materials to a minor whether or not the individuals depicted are underage or not, should be a crime. HB 90 does just this.
3. HB 90 allows for the forfeiture of property, such as computers used in committing electronic distribution of indecent materials to minors. This forfeiture could only occur after conviction.
4. Adding “attempt, solicitation, and conspiracy to commit murder” to the list of crimes for which the statute of limitations do not apply. Currently, the statute of limitations is just 5 years. With the addition of a cold case prosecutor, the department of law feels that they can successfully bring those who fall under this category to justice if the statute of limitations is lifted.
5. Currently, the courts are being asked to hold repeat bail review hearings based on little or no actual new information. The multiple bail review hearings are being used by defendants as a tactic to wear down an overburdened court system with repeat, inappropriate proposals to release a defendant.

HB 90 would require that the information offered supporting a subsequent bail review hearing actually be “new” information. It will help balance the constitutional right to bail with the constitutional right of victims to be treated with dignity, respect and fairness.
6. Under the premise that criminals should serve their sentenced time, HB 90 disallows credit toward a term of incarceration for time served while in a private residence, under

electronic monitoring or for certain treatment programs that are not similar to incarceration.

7. In 2006, the legislature adopted extended periods of probation, including a minimum of 15 years for felony sexual assault in the first degree, for felony sex offenders. HB 90 would change the maximum years of probation to 25, allowing for conformity to current law and to allow more flexibility in setting probation requirements.

8. Currently, persons convicted of electronic distribution of indecent material to minors do not have to register as sex offenders. HB 90 requires that persons convicted of this crime register as a sex offender.

9. In an effort to stem the abuse of post conviction relief, HB 90 requires that a person who brings an action for post-conviction relief, based on the claim that the person's attorney in a prior application for post-conviction relief was ineffective, must file the claim within one year after the court's denial of the prior application.

10. HB 90 provides that a prisoner may not be granted a good time deduction for any period spent in a treatment program, private residence, or under electronic monitoring. The good time deduction is to reward good behavior while incarcerated, and not in a home or similar place.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSHB090-LAW-CJL-3-23
 Bill Version: CSHB 90
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title An Act relating to bail

Dept. Affected: Law
 RDU Criminal
 Component Criminal Justice Litigation

Sponsor REPRESENTATIVE(s) SAMUELS, STOLTZE
 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

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Check 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)

See page 2.

Prepared by: Robert Meiners, Admin. Services Manager
 Division Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency Department of Law

Phone 465-5427
 Date/Time 3/23/07 12:07 PM
 Date 3/23/2007

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. CSHB 90

ANALYSIS CONTINUATION

The bill would adopt limits for bail hearings to be scheduled by defendants after the defendant has already had two bail hearings. It would require the defendant to submit new information that the defendant hadn't known about at the last bail hearing. It would also require seven days between bail hearings after the first two hearings, unless the prosecuting authority stipulates otherwise.

The bill would adopt several provisions that would help with the prosecution of sex offenders and the prevention of a sex offender from reoffending. For example, it makes it a class A misdemeanor for a sex offender on probation who is required to take periodic polygraphs to fail to do so. The polygraph is an important tool in monitoring sex offenders, and failure to submit may mean that the offender is reoffending.

The bill prohibits sending any indecent material to minors under the law prohibiting electronic distribution of indecent material to minors. It also requires persons convicted of this crime to register as sex offenders.

The bill adopts standards for when a court may grant credit against a term of incarceration for time spent in a treatment program.

It sets time limits on the filing of a second or subsequent application for post conviction relief if the application claims that the defendant was afforded ineffective assistance of counsel.

Passage of this legislation would not have a significant fiscal impact upon the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSHB090-DOA-PD-3-23-07
 Bill Version: CSHB (JUD K)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to credit towards service of a sentence RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representatives Samuels and Stoltze
 Requester _____ Component No. 1631

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	*	*	*	*	*	*

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: _____ *

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 creates an additional Class A misdemeanor sex offense, requires subsequent bail proposals to be based upon new information not previously known or presented, defines the circumstances under which jail-time credit may be granted for court-ordered residential treatment, and extends the allowable length of probation from 10 to 25 years.

This bill may result in an increase in new cases and is expected to generate litigation. The fiscal impact of this legislation, however, can not be reliably predicted. The Agency, therefore, submits an indeterminate fiscal note.

Prepared by: Quinlan Steiner, Director
 Division: Public Defender Agency
 Approved by: Rachael Petro, Deputy Commissioner
 Agency: Department of Administration

Phone (907) 334-4414
 Date/Time 3/27/07 10:00 a.m.
 Date 3/27/07 10:30am

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSHB90-DOC-A&O-IDO-
 Bill Version: CS HB90 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title An Act relating to credit toward service of a RDU Administration and Operations
sentence of imprisonment: relating to violation of probation . . . Component Institution Director's Office
 Sponsor Representatives Samuels
 Requester House Judiciary Component No. 1381

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	*	*	*	*	*	*

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)

The Department of Corrections anticipates a significant financial impact to the institutional facilities due to passage of this legislation; however, the fiscal impacts can not be determined at this time. Currently the department does not have the information to develop an accurate cost estimate. The department is conducting an analysis to develop preliminary fiscal impacts of this proposed legislation.

Prepared by: Sharleen Griffin, Director
 Division Administrative Services
 Approved by: Dwayne Peoples, Deputy Commissioner
 Agency Department of Corrections

Phone (907) 465-3339
 Date/Time 3/28/07 12:05 PM
 Date 3/28/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 90
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title An act relating to hail. RDU Administration and Operations
 Component Office of the Commissioner
 Sponsor Representative Samuels
 Requester House Judiciary Component No. 694

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation should have no fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director
 Division Administrative Services
 Approved by: Dwyane Peoples, Deputy Commissioner
 Agency Department of Corrections

Phone (907) 465-3339
 Date/Time 1/31/07 1:24 PM
 Date 1/31/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSHB90-DOC-A&O-P&P
 Bill Version: CS HB90 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Corrections

Title An Act relating to credit toward service of a sentence of imprisonment: relating to violation of probation . . .

RDU Administration and Operations

Sponsor Representatives Samuels

Component Statewide Probation and Parole

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	*	*	*	*	*	*

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)

The Department of Corrections anticipates a significant financial impact to probation and parole due to passage of this legislation; however, the fiscal impacts can not be determined at this time. Currently the department does not have the information to develop an accurate cost estimate. The department is conducting an analysis to develop preliminary fiscal impacts of this proposed legislation.

Prepared by: Sharleen Griffin, Director
 Division: Administrative Services
 Approved by: Dwayne Peoples, Deputy Commissioner
 Agency: Department of Corrections

Phone (907) 465-3339
 Date/Time 3/28/07 12:04 PM
 Date 3/28/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB090-DOA-OPA-2-7-07
 Bill Version: HB090
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to bail. RDU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Reps Samuels, Stoltze, Hawker, Dahlstrom, et al.
 Requester _____ 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	*	*	*	*	*	*

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: _____
 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)

See Analysis Continuation, Page Two.

Prepared by: Joshua Fink, Director
 Division: Office of Public Advocacy
 Approved by: Kevin Brooks, Deputy Commissioner
 Agency: Administration

Phone (907) 269-3501
 Date/Time 2/7/07 1:30 PM
 Date 2/9/2007

ANALYSIS CONTINUATION

This bill amends the bail statute to limit subsequent bail review hearings to those proposals that rely on new information, not previously considered by the court. Explicitly excluded from the definition of new information are (a) new or additional third-party custodian proposals unless the third-party becomes unavailable; (b) third-party proposals after three or more third-party proposals have been rejected; (c) an inability to obtain an appropriate third-party; (d) a monetary reduction after a third-party has been approved; (e) an inability to post the monetary bail; (f) the passage of time (including the amount of time that the defendant has been incarcerated); and (g) any information that could have been presented at a previous bail hearing.

The limitations created by this bill could lead to situations in which a defendant would be arguably held without bail. For example, a defendant charged with disorderly conduct or other B misdemeanor could be held in jail awaiting trial for a period that exceeds that maximum possible jail term, or a defendant with an appropriate third-party could be unable to obtain a hearing to propose the third-party. A defendant in such a case would be unable to obtain a ruling from the court. The Agency, accordingly, anticipates additional litigation: including appeals, habeas petitions, and claims of ineffective assistance of counsel.

The Agency can not predict the number of cases that will be affected by this bill or the precise litigation that would be generated and, therefore, submits an indeterminate fiscal note.

CS for HOUSE BILL 90
SECTIONAL ANALYSIS

Section 1 provides that it is a class A misdemeanor for a convicted sex offender, who is on probation or parole, to violate particular conditions of probation or parole. The probation conditions include the requirement that the offender submit to regular polygraph examinations, the offender participate in treatment specifically related to the offense, and a condition that the court finds is specifically related to the defendant's crime.

The parole conditions include participation in treatment or counseling, reporting to the person's parole officer, abiding in a particular geographic area, submitting to periodic polygraph examinations, refraining from particular risky behavior related to the parolee's offense or criminal history, and abiding by certain conditions for sex offenders who also have committed domestic violence.

Section 2 Under current law, a person commits the crime of electronic distribution of indecent material to minors if the person sends certain indecent material depicting minors. This provision would also prohibit a person from sending indecent material to minors that depicts adults.

Section 3 is a conforming amendment that would allow the forfeiture of property such as computers used in committing electronic distribution of indecent materials to minors. The forfeiture could occur only after conviction of the offense.

Section 4. Under current law a prosecution for murder and certain sex offenses may be brought at any time. This provision would add to those crimes that may be brought at any time the attempt, solicitation, and conspiracy to commit murder. The Department of Law has a cold case prosecutor who has been successful in bringing cold cases to trial, but has been hampered by the statute of limitations for attempt, solicitation, and conspiracy to commit murder, which under current law is five years.

Section 5 amends the law addressing when a person arrested for a crime may request a third and subsequent bail hearing. Current law requires the person to provide notice of new information that will be presented to justify a new hearing. The bill specifies that new information does not include the fact that the person cannot post the required bail, or other information that the person knew about but did not present at a previous hearing. The bill would also provide that seven days must elapse between third and subsequent bail hearings, unless the prosecuting authority stipulates otherwise.

Section 6 sets standards for when a court may grant credit toward a sentence of imprisonment for time spent in a treatment program. Credit may be given if the court has ordered the person to participate in the program as a condition of bail release or probation; the treatment program meets the standards set forth in the bill; and the director of the treatment program has informed the court that the person has participated and complied with the requirements of the program, has resided in the facility, and has abided by its rules.

The standards for granting credit toward a prison sentence require the program to be a residential facility that confines the person. The person must be subject to disciplinary sanctions for violating the facility's rules, and must be subject to immediate arrest without warrant for leaving the facility without permission.

A court may not grant credit against a prison sentence for time spent in a private residence or under electronic monitoring.

Section 7 changes the maximum period of probation from 10 to 25 years. In 2006, the legislature adopted extended periods of probation for sex offenders. This provision would conform the maximum period of probation in current law to these extended periods.

Section 8 requires a person convicted of electronic distribution of indecent material to minors to register as a sex offender.

Section 9 requires a person to bring an action for post-conviction relief, that is based on the claim that the person's attorney in a prior application for post-conviction relief was ineffective, within one year after the court's denial of the prior application for post-conviction relief is final.

Section 10 provides that a prisoner may not be granted a good time deduction for any period spent in a treatment program, a private residence, or under electronic monitoring.

Sections 11 and 12 include applicability provisions and an effective date of July 1, 2007.

From: Daniel Shorey
To: Bob Linton; John Novak; Sharon Marshall; Susan Parkes
Date: 12/19/2006 5:18:22 PM
Subject: More Judge Card bail

As we are (hopefully) tracking the court system's horrific record of releasing defendants. Here is another, State v. Cody Graham 3AN-06-11397 and 06-12606. The following is a truncated version of the 7 page pleading I filed with the court before today's bail hearing.

Following an argument on 16 October 2006, Cody Graham shot his girlfriend, Gretchen Waggood, in the back with a .357 revolver at their home in Eagle River. Ms. Waggood suffered a single gunshot wound to her upper left back, several broken ribs, a collapsed left lung and severe internal bleeding. Due to extensive live-saving medical care Ms. Waggood survived the shooting and was released from Alaska Regional Hospital on 24 October 2006.

On 6 November 2006, the first bail hearing was held and the district court approved Patricia Shipe as a third-party custodian but refused to lower the monetary bail or approve a second proposed third-party custodian, Timothy Joe Allen. At a second bail hearing on 14 November 2006, Superior Court Judge Larry Card lowered Cody Graham's bail to \$15,000 cash/corporate over the State's objection. Cody Graham posted bail and was released to Ms. Shipe's custody. Ms. Shipe and Mr. Graham were explicitly told that Mr. Graham was not to have any contact with Ms. Waggood and that there was to be no drug use.

So, there is the first time Judge Card made a huge mistake. Lowering bail after another judge had denied the request. No change in circumstances.

On 29 November 2006, APD Detective Jack Kleinsmith drove past Ms. Shipe's residence at 800 W. 56th Avenue #1 and observed the victim's car parked outside. Other officers arrived and were allowed entry by Patricia Shipe. Located inside Patricia Shipe's residence were Patricia Shipe, Ms. Waggood and Ms. Shipe's daughter, Josie Harvey. Defendant was no where to be found but the VICTIM was inside. Total bullshit.

Defendant and his TPC were arrested. Magistrate Shamberg set bail on the new misdo charges (unlawful contact) at \$50,000 cash + TPC.

Today, Judge Card lowered the bail to \$15,000 c/c on the shooting case and \$10,000 c/c on the unlawful contact case. He also approved THREE TPCs. The primary TPC lives here in town, the "relief" TPC for evenings also lives in town, and the weekend "relief" TPC lives in Palmer.

So now we'll never be able to track the Def's whereabouts. I spoke with Det Kleinsmith and we're trying to formulate a plan of attack. We anticipate Def will post the bond soon (tonight) but will have photos of everyone involved (including TPCs) out to patrol starting tomorrow including house checks.

I don't know what else to say.

Dan

From: John Novak
To: Keri Brady
Date: 1/24/2007 12:05:28 PM
Subject: Repeat Bail Proposal Legislation

The best poster child case as to which I am aware, and which I personally handled, is *State v. Thomas McElwain*, 3AN-S04-11843 CR. The case involved the defendant nearly running over with an automobile APD Ofc. Mark Laporte behind the Gaslight Bar at closing time. (The case eventually went to trial with the jury convicting the defendant as charged of multiple offenses, including felony assault.) Det. Laporte was working nights and had to interrupt his sleep for each of the six bail hearing conducted. There were no new circumstances for the bail hearings, only new pitches/proposals. When the defendant noticed up a seventh bail hearing, I filed an opposition memorandum pointing out that the defendant had not asserted any new circumstances and requested an order precluding the sought after bail hearing. Now retired Superior Court Judge Hensley denied my request via written order. (I have provided you the pleadings and order.) Det. Laporte would be a great person to have testify before the legislature.

Another case in which the defense was successful in getting the court to eventually rule that defendants are entitled to a unlimited number of bail hearings despite the recent legislation is the Anchorage Football stadium shooting case. I initially was successful in getting Judge Aarseth to issue an order precluding a bail hearing when the defendant failed to put anything in the blank for "new information." Shortly thereafter, Judge Aarseth went on military leave. I then was successful in getting Judge Suddock to rule that "new information" must be something more than a new pitch/proposal. Judge Suddock stated to rule other wise would allow all defendants an unlimited number of bail hearings and thereby render the newly enacted statute meaningless. Just when I thought we were looking good, Judge Aarseth came back from leave and ruled that his earlier ruling was limited to cases in which a defendant fails to list anything as "new information." Judge Aarseth made clear that a defendant is entitled to an unlimited number of bail hearings provided a new bail proposal/pitch is being made. It was at this point that I threw in my court towel and suggested that a legislative fix is needed. My suggestion is that the statute needs to again be amended to make clear that "new information" does not include a new bail pitch/proposal or the passage of time.

John

↑ In this case
the V became so
frustrated, he
finally quit
coming to BHs
/NAH

From: John Darnall <John_Darnall@law.state.ak.us>
To: <Keri_brady@law.state.ak.us>
Date: 1/24/2007 11:50:28 AM
Subject: Fwd: Re: Le, Dieu//More Bail Hrg Stuff

Attached is a bail hearing on Dieu Le. I had to dismiss a case on the day of trial because the victim passed away. She was an elderly lady (Florence Jackson) who Le bilked close to \$40,000 dollars out of. Trina Sears inherited one of the drug cases that I was working on involving Le before I moved to Prop. Her memo is attached.

This guy also got back out on EM after violating bail over our objections. He had four cases pending in the system at one time-- 3 Fraud and 1 Drug. We could not keep this guy in jail.

He was sent to Genesis House and violated rules and got kicked out too.

-JD

>>> Trina Sears 01/24/07 11:34 AM >>>

John,
Here's the bail memo. Can you add more info about subsequent bail hearings? He was allowed back out onto EM over our objections, etc.

Thanks,
Trina

>>> Patrice Southerland 01/24/07 11:31 AM >>>

Trina John wants to know if you have a copy of the bail memo that you did on Dieu Le. If you do please email John Darnall a copy ASAP.
Thanks!

To: File
From: Trina Sears
Re: Bail history
Defendant: Dieu Le

10/16/04 Defendant charged MICS 3 – initial arraignment. Bail was \$5000 cash.

11/16/04 Def indicted on MICS 4 (a witness was not available for grand jury). Bail continued \$5000 cash.

11/18/04 SCA – Judge would not lower bail at def's request because def has 4 prior felonies! Court denied request to lower bail. Judge Hensley.

12/21/04 BH. Defendant released to go to SAARP. NO objection by state at that time. No cash bail required at that time.

3/16/05 SAARP reports def kicked out for spitting on another resident. Def not complying with SAARP rules. Def. left SAARP 3/15 at approx. 6 a.m.

3/16/05 Def. showed up late. After argument by both sides, bail set at ZERO + CRC w/ passes.

4/7/05 BH. It appears from the file that bail set at \$5000 c/c w/ proof of employment OR def. could go to CRC w/ ZERO bail.

4/11/05 Def. committed felony theft. (arraigned 6/6/05 in district court). 05-4849CR

4/29/05 Def. committed felony theft.

5/5/05 Def. arraigned district court on felony theft & forgery charges. 05-3904CR

6/1/05 SCA. CRC proposal denied. Def. committed new crimes while on bail in this case.

6/24/05 BH. CRC approved w/ \$5000 c/c concurrent in all cases. Passes for court, atty, PO, med, and treatment.

7/14/05 BH. Genesis House approved. \$5000 c/c concurrent in 04-10358, 053904. \$10,000 c/c in 05-4849 already posted. See Order & Conditions of Release.

8/17 BH. Def. requests work passes. State opposes because def is contacting theft victims. Court wants more info on Genesis House monitoring of contact opportunities.

8/24/05 BH. Genesis House present and assures court. Work passes approved.

10/12/05 State re-indicted on MICS 3. We had witness to go forward on dealing charge.

10/24/05 BH. State's request. Def. misrepresenting his passes. He said he was going to work. He did not go to work on the day he said in his pass. Court does not remand. Sternly cautions defendant. Court notes this is not the first time defendant confused about his conditions.

11/7/05 BH. Genesis House discovered defendant lied about going to work (different than October incident). UA administered on 11/6 was positive for cocaine. Defendant confined to residence. Defendant walked away. Bench warrant \$15000 c/c + TPC concurrent in all three cases.

11/23/05 Defendant arraigned on BW.

8/16/06 – Richardson's neighbor and current TPC, Robin Meloy, called to report that Richardson had walked away. She also reported that Richardson and "Vangie" (Evangeline, his girlfriend) have been spending lots of time together.

Meloy called Richardson's Probation Officer, Dan Traxinger, and the DAO to report the violation. She should be relieved of her obligation.

I contacted Sid Billingslea to report the bail violation. She is only available telephonically today. PLEASE CALL HER AT 529-4039.

ASK FOR THE CURRENT BAIL TO BE FORFEIT AND NEW BAIL IMPOSED AT \$50,000 cash AND NEW TPC.

Richardson has violated prior bail releases (including a release to SAARP). In fact, the current robbery crime was committed while he was on TPC release (in a prior robbery case) to his foster mom, Emma Milcratus, a nurse at CIPT.

FYI – I called the approved work TPC, Hyo Zong, and Mr. Zong indicated that Richardson had not started working for him yet. Zong thought that a job might come open in 8-10 days and that Richardson would be working as a general laborer on a home construction project. I told Zong that Richardson might be remanded for walking away from the residential TPC that was previously approved.

From: Katholyn Runnels
To: Keri Brady
Date: 1/24/2007 11:47:13 AM
Subject: Your BH anecdote request

Keri -

The case that I was telling you about Alison is going to email you about - defendant's name was Logan McClellan. I have an additional anecdote that I thought would be helpful. Defendant's name: Michael Davis. Michael Davis charged with his third F.DUI in 12/04 and almost immediately released to his mother. He stayed that way until approximately a year later when I learned that she was a sham TPC for the year. In August of 05 Davis was arrested for DV assault on his girlfriend (and intoxicated without TPC) he was taken to jail, pled out and served approximately 30 days or so. No violation call from Mom (she is currently on BW status for the TPC charge). I talked with people at courthouse who all provided stories that Mom had been a sham. So defendant remanded January 06, like a week later defendant proposed another TPC (family member) which was denied. So a week or so after that defendant proposed another TPC (mother's sister) who was approved over State's objection. A month or so after that I get a call from an officer that they had received a call about defendant violating by being without TPC, drinking, and having weapons. Officers found defendant without TPC and arrested him on violation without any further investigation of violations. New bail set at 10,000 cash and EM. So shortly thereafter another bail hearing to reduce cash amount - ct. denied. Then another bail hearing to approve specific EM (approved) Defendant released on EM. Shortly after that in like April/May - defendant puts on for another bail hearing to reduce the UAs per week because can't afford (court denied) and within a week of that hearing defendant violated by having hot UA for cocaine and marijuana. When I set the bail hearing to have defendant remanded - he failed to appear and cut his ankle monitor that day, which his mom returned to the EM company the next day for her deposit. She has also requested the court return the 10000 that she posted. He was finally remanded to custody late June and stayed there until his trial in August.

Hope that help. Let me know if you need any additional information.

Kat

Jane Pierson

From: Emily Stancliff on behalf of Rep. Jay Ramras
Sent: Thursday, April 12, 2007 12:57 PM
To: Jane Pierson
Subject: FW: HB 90 Section 6 (d)

From: steve [mailto:schristopher@gci.net]
Sent: Thursday, April 12, 2007 12:49 PM
To: Rep. Jay Ramras
Cc: Rep. John Coghill; Rep. Lindsey Holmes; Rep. Bob Lynn; Rep. Nancy Dahlstrom; Rep. Ralph Samuels; Representative_Max_Gruenbrg@leg.s.state.ak.us
Subject: HB 90 Section 6 (d)

Dear Representative Ramras and Members of the House Judiciary,

This email is in regard to HB 90. As I stated to the committee during testimony; our concern is with Section 6. In specific, page 4, line 31 (d).

I would like to share with you the following:

- **The Alaska Monitoring Services Electronic Monitoring program (AKMS) is in no way reflective of a "dude ranch."** As a private company, we are held to a higher degree of accountability by the Courts, Prosecution, Defense Council and Community. If we don't perform to the degree expected of us, the courts do not refer individuals to us and we don't have a business. Our liability insurance is over \$50,000 per year without any claims filed. We can not afford to be lax in our programming. Additionally, the entire concept of Alaska Monitoring Services program is built upon individual responsibility. What this means is that the individual enrolled has to actively engage the poor behaviors and thinking errors that brought them to us. Make no mistake; being called to change behavior that has often taken them a lifetime to develop is no easy task. This is not a warehousing program. The end product here is for the individual to effect positive CHANGE in their life. Failure to achieve that results in education, increased supervision, sanctions and/or remand.
- **AKMS only accepts those on the EM program whose score is within an acceptable range for Community Corrections.** AKMS uses a modified risk assessment instrument that was developed and is used by the Ohio Department of Corrections. The risk assessment is based on the LSI-R instrument. *It does not matter the level of income or status a potential client possess; if he/she does not meet the scoring criteria they are not accepted.*
- **After the Risk Assessment, AKMS only accepts clients who are willing to comply with AKMS standards.** Most of our clients are lower to middle class; those who are on the verge of losing jobs, homes and family if they are not willing to look at the patterns and behaviors that got them into the situation they find themselves in. We screen for those who are willing to engage their beliefs and address the behaviors which historically have lead them to act inappropriately.
- **Because AKMS is a private company and held to higher degree of accountability, AKMS**

meets or exceeds DOC standards for Electronic Monitoring. Our clients are subjected to the same rules as the Alaska Department of Corrections (DOC) Electronic Monitoring Program. AKMS uses Active and Passive GPS monitoring to track clients in the community. We use Transdermal Alcohol Monitoring technology to determine alcohol consumption. When requested by the courts we can and do use the same equipment as DOC uses in their program. We conduct rigorous and truly random drug screenings. We conduct field visits. Our clients are required to meet weekly with his/her case agent. They are required to seek appropriate treatment and progress is followed.

- **AKMS is aware and has never suggested that Electronic Monitoring is equivalent to jail.** However, it is a long way from being "free." Our goal for the EM program is to provide structure and opportunity for skill acquisition and moral/social growth to occur. A large body of evidence supports the concept of cognitive behavioral programs outside of corrections facilities with significant reductions in overall recidivism.
- **AKMS is a valuable tool for the Courts.** AKMS provides the courts with multiple options that it can not get from the Department of Corrections. Being private, we can provide services in multiple capacities without the need for extensive personnel change or lengthy processes. Examples of this are Substance Abuse and Mental Health Treatment, fully staffed and supported drug and alcohol testing, vehicle monitoring and case management.

Additional Facts:

- Most AKMS clients are not "rich" and receiving special treatment. In fact, many of our clients of that status (rich), usually fail out of the program within 2 weeks because of an inherent conflict with a structure holding them personally accountable regardless of their economic standing. Most of AKMS' clients use our services to pay their dues in a way that allows them to continue to put food on the table for their families and continue to work and pay taxes.
- Our EM program is client (offender) funded. It is by design that an individual enrolled in our programs must be accountable for the cost. While it is accurate that a truly "indigent" population with problems similar to those we serve exists, we neither specifically exclude nor specifically serve them. We do suggest that one of the ways to escape the problems that many of these individuals face, is to get on with the business of life; including getting a job, taking care of their responsibilities and facing up to their problems rather than making the state, municipality or their families responsible for them. In return for their efforts, we offer skills training, mental health and substance abuse therapy, structure and general guidance to assist them in changing their lives for the better.
- AKMS uses the same program structure that was originated in the Wellness Court under Judge Jim Wannamaker. I know the program well as I was part of the team that developed it.
- AKMS' services reduces the impact on DOC and the Court System of high case loads. It allows for greater accountability from the client while addressing the issues and behaviors that put the client in his/her situation.

Finally, with the increased population rates that Alaska is experiencing, it is statistically safe to predict that crimes rates will rise as well. There is already a growing concern of the recidivism rate currently experienced by Alaska. With concern for the potential budget shortfalls the state is facing in the upcoming years; now is not the time to begin reducing options for the courts in finding a manageable solution to increasing criminal populations. As I write this email, we have received word of a repeated request from the courts in Valdez to provide services there.

I would also request the committee to take into consideration other state agencies that are using AKMS

services to assist in their operations. Office of Children Services and DOC in Palmer uses AKMS' drug testing services. The Division of Vocational Rehab in Fairbanks has a contract for services and the Therapeutic Courts statewide utilize AKMS services in several ways. The Alaska Court System uses our services as well and in cases where the court has determined that the client (defendant) has shown improvement and worked a program, it has awarded jail credit. It is no different than the Therapeutic Courts currently being used except for the fact that there is no cost to the State of Alaska.

As Representative Lynn has stated, economic disparity is nothing new and permeates our society. I would ask the committee to consider if it is prepared to build more prisons, hire staff or pay the costs for housing prisoners in other states in order to ensure the correctional system is "even."

I request that the members look at giving the courts more tools to work with rather than take tools away from a system that needs all the assistance it can get. Please remove item (d) line 31, page 4.

Respectfully,

Steve Christopher

From: Erin White
To: Keri Brady
Date: 1/24/2007 11:47:12 AM
Subject: Bail Issue

Keri,

Beth Bruckman is the defendant that I was telling you about. She has a PTR pending in her felony DUI case. In June of 06, she received a sentence of 24/20; 5 years probation. This is her first PTR. When PO Grist first filed the PTRP on December 24th, she noted that the defendant reported to her while intoxicated. Though she had a strong odor of alcohol, she denied drinking. When confronted, the defendant told PO Grist that she was allowed to drink. PO Grist showed the defendant a copy of the judgment, and the defendant responded with, "so I am going to jail for a clerical error." The defendant also had a vehicle key in her possession. As the defendant continued to deny that she had been drinking, PO Grist noted that she was a danger to the community and at a high risk to re-offend.

At her arraignment on 12/15, I asked for bail to be set at 10,000 c/c plus a CRC. The judge set bail at 1,000 c/c plus CRC. On Dec. 22nd, the defendant proposed her mother, Elizabeth Bruckman, and her husband, Patrick Fowler, as TPCs. I did not oppose them, but I asked for a 10K cash posting, based on PO Grist's remarks. The judge released her to the TPCs on a 1000 c/c bond.

On 1/19, the defendant violated again by showing up to treatment with a "strong odor" of alcohol about her. The defendant refused a breath test and asked that this not be reported to her PO. At her arraignment, the defense asked for the defendant to be returned to the same TPCs. I opposed the request and asked for bail to be set at 10K cash, with new TPCs or the CRC.

PD McGrady argued that the defendant said that she was simply using cough medicine. I told the judge what the treatment provider had said. The judge set a bail hearing for Thursday, due to the factual dispute. Yesterday afternoon, I called Lana Grist, and she said that she and the treatment provider will come to Thursday's hearing. Lana also told me that the defendant had admitted to drinking. Apparently, one of the TPCs was also drinking with the defendant! I've discovered this information to the defense.

Please let me know if you need more info. I'll keep my ears open for any other outrageous requests.
Thanks,

Erin

From: Michelle Tschumper
To: Keri Brady
Date: 1/24/2007 11:43:02 AM
Subject: Bail Hearings

Hi Kerri,

I had one this morning, where for the second time in a row the PD proposed a TPC that was a witness to the crime, and both were parents of one of the victims. They did not mention this, and I had to drag it out of the TPCs.

PD's routinely request bail reductions without giving a reason.

Judge Swidersky approved a TPC that was a girlfriend of the defendant and scheduled to GIVE BIRTH IN ONE WEEK. He was in on serious drug charges.

PDs automatically assume that getting a TPC approved warrants a reduction in bail, but as I see it, the higher amount was already required, even with a TPC, so that is not a reason to lower bail.

That's all I can think of for now.

Thanks!

Michelle

From: Aaron Sperbeck
To: Brady, Keri
Date: 1/24/2007 11:39:04 AM
Subject: Bail hrngs

Keri:

Trevon Owens / Statford Anderson (Election day shooters)
Judge Rhoades reduced their bail from \$50K cash to \$25K/c on the strength of TPC over strong objections by the vic and SOA (me). Within days of release and over the course of several days, APD observed the Defts to be without the TPC entirely, engaging in apparent drug activity and associating with known gang members, and associating with each other in violation of the court orders. Clearly shows an abuse of judicial discretion by the court and the fact that certain judges make consistently troublesome rulings.

Aaron D. Sperbeck
Assistant District Attorney
310 K Street, Suite 520
Anchorage, AK 99501
(907) 269-6346

Ralph - this is a
good example of
making it a
crime if def violates
bail condition of
having a gun.
(I like much better
than crime to drink
alc while on probation
MAH

From: John Darnall <John_Darnall@law.state.ak.us>
To: <Keri_brady@law.state.ak.us>
Date: 1/24/2007 12:27:10 PM
Subject: Hunt BH outline

** High Priority **

3AN-S05-5026 CR

6-10-05 DCA 20K cash + TPC
10-7-05 SCA Def wants no TPC (only EM w/ Active GPS, curfew, Drug Testing, work passes) State opposed. Ct orders bail remains.
11-18-05 Def proposes wife (EH) as TPC. Ct denies proposal.
4-4-06 Def proposes wife again. State objects and Court denies proposal.
4-18-06 Def proposes CRC in lieu of TPC and \$20K cash to \$50K c/c. Court approves CRC and reduces bail to \$10 K cash (Concurrent in all three cases).
6-8-06 Proposes 20K cash and new TPC (TH, not his wife). Court continues b/c TPC FTA.
7-11-06 Defendant Proposes new TPC (JD) Court denied proposal b/c TPC FTA
7-13-06 Defendant released to TPC. (not sure what happened here).
10-19-06 Defendant remanded because he was found drunk without TPC by Probation officer. BW issued 20 K cash + new TPC .
11-6-06 SCA Bail Increased to \$25 K cash + TPC (Defendant reoffended in Kotzebue during his BW status).

* All dates refer to bail hearings unless otherwise noted.

-JD

History of Bail Hearings in State v. Tamika Hedin:

10/15/05 – Bail was set at weekend arraignment at \$5000 cash + TPC; no contact with Jeff Hedin; defendant to stay 1000 feet away from Jeff Hedin's work and residence

10/28/05 – At Superior Court Arraignment, the defendant requests release to electronic monitoring with Alaska Monitoring Services. The Court denies this request, saying that defendant needs more supervision. The Court approves as an alternative \$5000 c/c and release to a CRC.

11/21/05 – Apparently CRC has not yet taken defendant. Proposes her mom as TPC – Elizabeth White. Elizabeth White is approved as TPC until CRC will take Hedin. All other bail conditions remain – no contact, not coming within 1000 feet, etc...

11/22/05 – Approved TPC Elizabeth White came in to meet with myself and Michal. She had not been able to go to the jail yet to pick up defendant, and defendant called her numerous times despite White's explanation that she could not easily get up there (White had a lot of physical disabilities). White says she does not want to be TPC anymore because she knows that defendant will not follow her rules and will do whatever she wants to do.

11/23/05 – We put on for bail hearing, and White reaffirmed that she does not want to be TPC. Bail is back to \$5000 c/c and a CRC, plus other conditions.

12/6/05 – Defendant proposes Elizabeth Melgoza, who lives on base at Fort Rich. At bail hearing, Melgoza says that she cannot be full-time TPC and that is what Court wants. Melgoza does not want to sign CRIMES notice. It is also unclear whether Fort Rich will let defendant back on base. Bail hearing continued.

12/19/05 – Bail hearing continued by defense. Defendant is not allowed on base at Fort Rich – they give us paperwork to that effect.

12/20/05 – Defendant is no longer proposing Elizabeth Melgoza; now proposing Elizabeth Dobosi. Dobosi has a pending DUI (believed to involve marijuana) with the muni. Defense won't agree to Dobosi being questioned as a potential TPC, given that she is being criminally prosecuted. Court denies proposal – reads to Hedin the notification from Fort Rich that she is not to go to or be on base there.

1/4/06 – Defendant proposes Samuel Davis as TPC. Davis is approved as full-time TPC; Ct. warns no alcohol, no contact with Jeff Hedin except as specifically related to divorce.

1/9/06 – Jeff Hedin calls myself and Michal. His truck was broken into while parked outside Al's Alaskan Inn during the weekend. He called police and they came out and made a report and took prints – can't tie to Hedin at this time, but she is suspected. Hedin later called Jeff Hedin and he made a video that recorded her voice – asked why he testified at grand jury and why he wasn't having the charges dropped.

We put on for bail hearing. Judge Hanley finds enough evidence as to the phone call, can't link truck break-in to Hedin at this point. Before the bail hearing, defendant is making a lot of noise, talking on her cell phone (without TPC monitoring her) in the gallery. A person unrelated to the case approaches afterward and tell Jeff he should be careful because she heard the defendant saying on her cell phone that she was going to have Jeff followed. Judge removes Samuel Davis as TPC and defendant remanded.

1/17/06 – Defendant proposes Elizabeth Melgoza and Jahmeca Blair as TPCs. Bail hearing gets continued because Blair has doctor's appointment.

1/18/06 – Blair is not at court. Defendant is saying that she has a crucial doctor's appointment (in her bail requests), but has not provided proof of that doctor's appointment. Bail hearing continued to 1/24/06.

1/25/06 – Defendant is now proposing Blair and Markie Freeman. Freeman is a victim in one of my robbery cases. Both TPCs are young – almost 10 years younger than the defendant. Court does not approve the TPCs – finds this is not strong enough situation for the defendant.

2/16/06 – Defendant proposes Tammy Hobson. Hobson is approved over State's objection. \$500 performance bond added to previous bail – no contact is the condition. No contact with Jeff Hedin and no going with ½ mile of his house.

3/16/06 – Another bail hearing on – defendant vacates the hearing.

3/20/06 – Defendant proposes adding Thelma Sparks as a TPC – approved with prior bail conditions and probation conditions remaining.

5/12/06 – Defendant wants to be released from TPC and allowed onto electronic monitoring – court denies this proposal.

Mid-June – Defendant agrees to plead open to criminal mischief, understanding that the State may assert non-Blakely aggs., and State will dismiss assault count. SCOP scheduled 6/30/06, will order pre-sentence report, and sentencing will be in 2-3 months. Defendant then puts this bail hearing on for electronic monitoring again.

Reasons to deny electronic monitoring – It does nothing to monitor whether the defendant attempts to contact the victim. The facts of this case are basically that the defendant gets the victim, Jeff, to meet her so that they can switch vehicles (after recently separating). The defendant gives Jeff a fake key to his vehicle (an SUV) and drives away in their other car. She comes back and takes out a knife and is using it to destroy the SUV. She then comes at him with the knife when he tries to stop her. She cuts through his sweater, but does get his skin. He calls 911, and she hits him and is biting him. He's just trying to stop her, and independent witnesses confirm this. She gets in the SUV and drives it away (actually just to the other side of the parking lot where he can't see). She uses some sort of bat or iron to break out the windows and beat further on the SUV. When the police arrest her after talking with she, Jeff, and independent

witnesses, she accuses the police of being racist.

Throughout this case, the defendant has been obsessed with the victim. She wrote him a letter, she's written letters to all sorts of people in our office, she posted an entry on a website she has trashing him, giving his personal contact info, and inciting people to try to get him. She has also been heard during a previous bail hearing saying that she was going to have him followed. There is an ongoing investigation into the death of Tamika and Jeff Hedin's baby – this happened before this case arose. Last I knew, Tamika was a primary suspect in that investigation. Also, the defendant has not been following through with probation conditions, has not been reporting to her PO, and actually ran from the PO's office one day when she was explicitly told to stay there. We just found this out from the probation office – they are considering filing an amended PTR. The defendant's probation officers don't trust her at all, and continue to request that the remainder of her time be imposed. Hedin is facing a presumptive term of two to four years on the criminal mischief charge, because of her prior felony.

Bernitz is saying that he wants the defendant out on EM because it will get her into a stable situation so that she can get custody of her son back. First, the Court should not consider this, because we do not know the truth about matters underlying any CINA or OCS-related cases. It may be in everyone's best interests to reunite Hedin and her son. It very well might not be. We don't know about this, and the Court shouldn't take a stand on it. My understanding is that there is that the powers that be are currently considering terminating Hedin's parental rights – and that might be the best outcome – we just can't make that decision in the context of this unrelated criminal case. Meanwhile, the defendant is making a bail proposal that was recently denied for a second time by Judge Aarseth. The victim IS in town and is opposed to the electronic monitoring proposal, and the proposal does nothing to monitor the defendant making contact with the V at a time where she knows she'll be on the line to serve a lot of time.

The defense is also doing this to try to get Nygren credit – they want to start storing up time while they await sentencing. If the judge is going to consider electronic monitoring, please be clear with the court that we are most concerned with the no contact order and that the defendant not be on base. The court does not need to order house arrest. We do not need the court to order restrictions that could be the basis of a request for Nygren credit. Aarseth has been clear in the past with other bail hearings that there were certain things he was ordering the EM company to monitor, and if they chose to monitor other things, that was up to them and not part of the court's order. Here the one thing we're most concerned about is something the EM company cannot monitor!

Minta Montalbo

From: Sydney Morgan
Sent: Thursday, April 12, 2007 10:20 AM
To: Minta Montalbo
Subject: FW: hb90

From: Steiner, Quinlan (Dept. of Admin) [mailto:quinlan_steiner@admin.state.ak.us]
Sent: Thursday, April 12, 2007 10:15 AM
To: Sydney Morgan
Subject: RE: hb90

Here is some suggested language that should address the concerns.

Section 5, Page 3, Line 16: "unless the prosecuting authority stipulates otherwise or a defendant has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the defendant is being held, a judicial officer may not"

X Section 6, Page 4, Line 24: "must be confined at all time to the grounds of the facility or be in the physical custody of an employee of the facility, except for court appearances, meetings with counsel, and for work as required by the treatment program."

If you have any questions, let me know.

Quinlan Steiner
Public Defender
Alaska Public Defender Agency

From: Sydney Morgan [mailto:Sydney_Morgan@legis.state.ak.us]
Sent: Thursday, April 12, 2007 9:45 AM
To: Steiner, Quinlan (Dept. of Admin)
Subject: hb90

Quinlan,

I am just looking over my notes from the HB90 committee hearing - in addition to the bail portion, you mentioned that section 6 might cause some problems. The example you gave was that this section could potentially prohibit the resident of a treatment facility from meeting with their lawyer or attending a court proceeding. Perhaps when you are working on amendment language for the bail issue you could also try to tackle this issue.

Thanks for your help.

Sydney Morgan
Staff to Representative Ralph Samuels
(907) 465-6791

From: Daniel Shorey
To: Bob Linton; John Novak; Sharon Marshall; Susan Parkes
Date: 11/15/2006 1:12:22 PM
Subject: Re: More bail hearing

3
A different TPC, however, should not entitle you to reargue the bail amount. The dollar amount difference between posting \$25,000 cash and \$15,000c/c is immense and Card doesn't appear to understand the difference.

Also, I finally saw the file after bail hearing and there wasn't a different TPC proposed. That was withdrawn.

Daniel K. Shorey
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>>> Susan Parkes 11/15/2006 1:06:22 PM >>>

2
As much as I hate the numerous bail hearings that derendants get, we need to be reasonable about what constitutes "new information" or a "change of circumstances". If someone's TPC asks to bow out or cannot handle the job, it seems to me that they should get a bail hearing to try and make a new pitch. In the hearings on this bill, the main complaint was that defendants would Judge shop the same proposal around - that should not be happening now. Also, the "he is still in jail" should not work either. But some true change - like new TPC - probably should get you a new hearing. Just my thoughts. susan

>>> John Novak 11/15/2006 12:58:55 PM >>>

I agree it is BS. Judge Card routinely is ignoring the 2005 statute.

>>> Daniel Shorey 11/15 12:44 PM >>>

John + Bob,

FYI.

I don't for sure if we're tracking these bogus bail hearing rulings or not, but here's one that Card screwed up royally.

1
I'm prosecuting Cody Graham for Assault 1 (shooting his GF in the back w/ a .357) and MIW3 (possession of a sawed-off shotgun). Def has no history but there were lots of drugs (misdo amounts), a grow operation, and signs of DV (broken doors and items in the house). Initial bail was \$25,000 cash + TPC. Def had a bail hearing in district court on 11-6-6. Ct approved a TPC and electronic monitory but refused to lower bail. Def was indicted. Def had bail hearing 11-14-6 w/ Judge Card and he approved a different TPC (apparently the other TPC couldn't do it), electronic monitoring and lowered the bail to \$15,000 c/c. There was no change in circumstances, the application for lower bail had been heard already + rejected (this argument was presented to Card by BH ADA).

Dan

Daniel K. Shorey
Assistant District Attorney
State of Alaska, Department of Law
Anchorage District Attorney's Office