

**HB**

**90**

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
Phone: (907) 465-3892  
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**Committee Members:**  
Senator Charlie Huggins  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

## Senate Judiciary Committee

### MEMORANDUM

TO: Jerry Luckhaupt, Leg. Legal

FROM: Cindy Smith

RE: CS for HB90

Please prepare a CS for HB90 with the following additions

CS for SB157 (LS0755\L)  
CS for HB 11(JUD) (LS0095\W)  
CS for SB5 (LS0097\O)

And amendments, attached, on:

Kidnapping (LS0331\O.1)  
DNA  
Deletion of specified material in Section 5.

AMENDMENT

OFFERED IN THE SENATE  
TO. CSHB 90(FIN)

BY SENATOR WIELECHOWSKI

- 1 Page 3, line 15, following "age":
- 2       Insert ";
- 3                       (6) kidnapping"

**AMENDMENT**

OFFERED IN THE HOUSE

TO: CSHB 90(FIN)

Page 3, line 28:

Delete "(A)"

Page 3, lines 29 – 30:

Delete all material

draft

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 90(FIN)

Page 6, following line 23:

Insert new bill sections to read:

“ **Sec. 11.** AS 44.41.035(b) is amended to read:

(b) The Department of Public Safety shall collect for inclusion into the DNA registration system a blood sample, oral sample, or both, from (1) a person convicted in this state of a crime against a person or a felony under AS 11 or AS 28.35 or a law or ordinance with elements similar to a crime against a person or a felony under AS 11 or AS 28.35, (2) a minor 16 years of age or older, adjudicated as a delinquent in this state for an act that would be a crime against a person or a felony under AS 11 or AS 28.35 if committed by an adult or for an act that would violate a law or ordinance with elements similar to a crime against a person or a felony under AS 11 or AS 28.35 if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA donor for use in forensic validation, forensic protocol development, quality control, or population or statistical data bases, [AND] (5) a person required to register as a sex offender or child kidnapper under AS 12.63, **and (6) a person arrested for a crime against a person or a felony under AS 11 or AS 28.35, or a law or ordinance with elements similar to a crime against a person or a felony under AS 11 or AS 28.35.** The department also may collect

for inclusion into the DNA registration system a blood sample, oral sample, or tissue sample from crime scene evidence or from unidentified human remains. The DNA identification registration system consists of the blood, oral, or tissue samples drawn under this section, any DNA or other blood grouping tests done on those samples, and the identification data related to the samples or tests. Blood samples, oral samples, and tissue samples not subject to testing under this section, and test or identification data related to those samples, may not be entered into, or made a part of, the DNA identification registration system.

\* **Sec. 12.** AS 44.41.035(i) is amended to read:

(i) The Department of Public Safety shall, upon receipt of a court order, destroy the material in the system relating to a person. The court shall issue the order if the person's or minor's DNA was included in the system under

(1) (b)(1) or (2) of this section and the court [IT] determines that

(A) [(1)] the conviction or adjudication that subjected the person to having a sample taken under this section is reversed; and

(B) [(2)] the person

(i) [(A)] is not retried, [OR] readjudicated, or  
*(adjudicated for)*  
convicted of another crime that requires having a sample  
taken under this section [FOR THE CRIME]; or

(ii) [(B)] after retrial, is acquitted of the crime or after  
*(and is not retried or adjudicated for another crime)*  
readjudication for the crime, is not found to be a delinquent

or

*that require  
a sample  
under this  
section,*

**(2) (b)(6) of this section and the court determines that**

**(A) the person arrested was released without being charged; or**

**(b) the criminal complaint, indictment, or information for the offense for which the person was arrested was dismissed, and a criminal complaint, indictment, or information for an offense requiring submission of a DNA sample is not refiled:**

\* Sec. 13. AS 44.41.035(l) is amended to read:

(l) The Department of Public Safety may not include in the DNA registration system a blood sample, oral sample, or tissue sample of the victim of a crime, unless that person would otherwise be included under **(b)(1) – (6)** [(b)(1) – (5)] of this section.

\* Sec. 14. AS 44.41.035 is amended by adding a new subsection to read:

(q) The department shall make every <sup>reasonable</sup> effort to process each sample collected from a person under (b)(1), <sup>(b)(5)</sup> (b)(2), and (b)(6) of this section and include the identification data resulting from the testing of the sample in the identification registration system within 90 days after receiving the sample."

Renumber the following bill sections accordingly.

Page 7, line 5:

**Delete all material and insert the following:**

**\*\* Sec. 15.** Section 14 of this Act takes effect July 1, 2009.

**\* Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2007.”

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


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

## MEMORANDUM

May 11, 2007

**SUBJECT:** SCS CSHB 90(JUD) (Work Order No. 25-LS0331\C)

**TO:** Senator Hollis French

**FROM:** Gerald P. Luckhaupt  
Legislative Counsel 

Enclosed is the draft SCS(JUD) you requested. I have one comment. I have serious doubts about the constitutionality of taking a DNA sample from a person who is merely arrested for crimes listed in the bill draft. Taking a sample at this time, before there has been any judicial involvement, would appear to me to violate Alaska's explicit right to privacy<sup>1</sup> and also be an illegal search and seizure under Art. I, § 14. I can conceive of no authority that would authorize dispensing with the warrant requirement in this situation. A number of other states, including the states of Virginia, Minnesota, and Texas require that a judicial determination of probable cause be made before a DNA sample can be taken from an arrestee.

GPL:ljw  
07-268.ljw

Enclosure

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<sup>1</sup> Art. I, § 22, Alaska constitution.

**DPS Suggested Changes to "Bonnie Craig" Amendments  
5-9-07**

1. Take out "presentment."
2. Change charge to arrested.
  - Helps with chain of custody issues, more practical
  - Currently how their computer system is set up; wouldn't be able to address "charged"
3. 2 Effective Dates:
  - Immediate effective date for collecting samples
  - 2 years for meeting 90 day processing timeline: July 2009
4. Clarify which information needs to be processed within 90 days:
  - DNA arrestees within 90 days
  - Crime scene not 90 days
5. Change to make "every effort" to process within 90 days, becomes good faith effort
  - Extenuating circumstances may prohibit: sick technician, instrument failure, stuck on a case in Barrow for 2 weeks
  - Don't want to open dept to possibility of a lawsuit
6. Will you include minors like SB 33?
  - If so, then paired with the "arrested" language, significantly increases workload. Juvenile samples must be removed when become non-juveniles
7. With our changes, they will be amending the fiscal note (previously \$350,000 for 2 half-time positions) to include four additional workers to handle caseload: \$4,500,000
  - Two criminalists
  - Technician
  - Codus (?) manager/administrator
8. Federal Grants available (that I asked about):
  - DNA Enhancement program--allows for overtime but in Alaska the criminalists are exempt from overtime (currently cannot accept the money)
  - Backlog Reduction Grant—subject to presidential funding, so not guaranteed; have to save samples until National Institute of Justice—cumbersome than in-house, not guaranteed funding

Annie Carpeneti has additional language for Page 2, line 19:  
"and a criminal complaint indictment or information that has not been refilled."

presentment

Change charge to arrested

Immediate effective date fro collecting

2 years for meeting 90 days

July of 09 for processing

Clarify which info needs to be processed within 90 days

DNA arrestees within 90 days

Crime scene not 90 days

Make "every effort" to process within 90 days

Because

Crime lab to process, but some circumstances that prohibit it, sick lab technicians. Stuck in barrow, could be 95 days even though good faith effort

Not open dept to lawsuit, possibility of a law suit

Instrument failure

Include minors?

Arrested, then significant increase in juvenile samples, also remove wh. become non-juveniles...significantly increases workload

Amending the fiscal note

Four additional physicians to handle caseload

Two criminalists

Technician

Codus (?) manager/ Administrator

Identify, recruit, certify criminalists

Federal

DNA Enhancement program-allows for overtime, the criminalists exempt from overtime

Backlog Reduction Grant—subject to presidential funding, have to save samples until natl instit justice—cumbersome than in-house

Not guaranteed funding

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## MEMORANDUM

March 23, 2007

**SUBJECT:** Problem with Amendment incorporated into CSSB 33(STA)  
(Work Order No. 25-LS0260\M)

**TO:** Senator Lesil McGuire  
Attn: Shalon Szymanski

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

The CS(STA) adopted by the committee contains an amendment adding the term "minor" in three places.<sup>1</sup> The inclusion of "minor" is incorrect and may lead to problems applying AS 44.41.035 in the future.

I am not entirely sure why "minor" was included but it was apparently based upon a mistaken assumption that the word "person" includes only adult individuals. This is incorrect. "Person" is not separately defined in AS 44 so the definition in AS 01.10.060(a)(8) applies. This definition includes "a natural person." A natural person is not limited to just adults but includes minors as well. In each of the three places where minor was added the term person already encompassed minors. By adding minors in these three places we are now left with a problem in interpretation of AS 44.41.035.

When interpreting statutes courts presume that the legislature means what it says and that it does not employ superfluous terms and language. A court interpreting AS 44.41.035 will presume that the legislature meant something by included "a minor" in these three places and not including "a minor" in the other provisions of AS 44.41.035. A court will attempt to give effect to all the words and terms used by the legislature. To do that in AS 44.41.035 may lead to some unintended consequences. AS 44.41.035(b) requires the collection of DNA samples from various persons. The amendment added "or minor" to AS 44.41.035(b)(5) which requires the collection of samples from "a person required to register as a sex offender or child kidnapper under AS 12.63." The use of "person" in this paragraph includes adults and minors as AS 12.63 requires persons (whether adults of juvenies) convicted of certain crimes to register as sex offenders. Similarly

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<sup>1</sup> The amendment adopted by the committee said to add "or minors" to the CS( ) on p. 1, line 14, and p. 2, lines 17 and 18, following "person." "Or minors" was changed to "or minor" as the plural was clearly incorrect. There was also no "person" found on p. 2, line 17, so "or minor" was added on lines 18 and 19.

AS 44.41.035(b)(1) requires the collection of samples from persons convicted of certain crimes; the use of "person" in this paragraph includes minors as minors can be convicted for at least some of those offenses.<sup>2</sup> New AS 44.41.035(b)(6) requires the collection of samples from persons charged with certain crimes; the use of "person" in this paragraph includes minors as minors can be charged with at least some of those offenses.<sup>3</sup> In AS 44.41.035(b)(2) the term "minor" is used because only minors may be adjudicated delinquent; the use of the broader term "person" here would have been incorrect.

Applying the rules of statutory construction to the addition of "or minor" to AS 44.41.035(b)(5) means that a court may be able to conclude that "person" does not have its normal meaning of a natural person, whether an adult or a juvenile, in AS 44.41.035(b) but must mean only an adult. A court could then fail to require the collection of DNA samples from a minor who is charged or convicted as an adult because only the term person is used in those paragraphs.<sup>4</sup> This interpretation and incorrect application of the law by the courts is only possible because of the inclusion of "or minor" in AS 44.41.035(b)(5). The inclusion of "or minor" here is incorrect and should be removed.

The same analysis applies to the addition of "or minor" made to AS 44.41.035(i) in sec. 2 of the bill. The term "person" that is used in AS 44.41.035(i) includes adults or minors. The addition of "or minor" can only lead to confusion or incorrect interpretation or application of the law by the courts.

GPL:lmb  
07-069.lmb

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<sup>2</sup> See AS 47.12.030(a) which requires automatic waiver of minors who are at least 16 years of age to adult court when they are charged with certain crimes and AS 47.12.100 which allows for waiver of juvenile court jurisdiction when a minor is found to not be amenable to treatment as a juvenile.

<sup>3</sup> See footnote 2, supra.

<sup>4</sup> AS 44.41.035(1) and (6).

## House Bill 14 in CS for HB 90

**Sec. 1 of HB 90 (same as Sec. 1 of HB 14)**

Prohibits a convicted drunk driver restricted from purchasing alcohol from entering a premise to obtain or consume alcohol, and provides for the civil penalty.

**Sec. 2 of HB 90 (same as Sec. 2 of HB 14)**

Creates a restriction on purchasing alcohol for convicted drunk drivers under court order not to drink. Requires court or parole board to notify individual that ID card must list restriction.

**Sec. 3 of HB 90 (same as Sec. 3 of HB 14)**

Allows (but does not require) a seller to require proof of ability to purchase by either showing state issued ID, proving out of state residency by showing out of state ID, or signing a waiver stating purchaser is not under restriction.

**Sec. 30 of HB 90 (same as Sec. 4 in HB 14)**

Requires DMV to cancel ID card of restricted individual and mark a reissued card for the period of restriction. Provides fee of \$50

**Sec. 31 of HB 90 (same as Sec. 5 in HB 14)**

Requires the restriction to also be listed electronically, to the extent the department is able to.

**Sec. 32 of HB 90 (same as Sec. 6 in HB 14)**

Instructs DMV to cancel the license of a restricted person and if a new license is issue, list the restriction for the period of the restriction.

**Sec. 33 of HB 90 (same as Sec. 7 in HB 14)**

Instructs court and parole board to require surrender of license and ID card and forward to DMV, report order within two days, inform person that their new ID or license will list restriction.

**Sec. 34 of HB 90 (same as Sec. 8 in HB 14)**

Provides fee of \$50 for issuing restricted license.

**Sec. 42 of HB 90 (same as Sec. 9 in HB 14)**

Provides effective date of January 1, 2008 to allow time for all agencies to conform.



# **Representative Ralph Samuels**

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## **House District 29**

**Date:** May 2, 2007

**To:** Senator Hollis French, Chair  
Senate Judiciary Committee

**From:** Representative Ralph Samuels

**RE:** Hearing Request for CSHB90(FIN)

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Please schedule a hearing for CSHB90(FIN) at your earliest convenience.

Attached please find:

1. CSHB90(FIN)
2. CSHB90 (JUD)
3. CSHB90
4. Sponsor Statement
5. Sectional Summary
6. Fiscal Notes

Please contact Sydney Morgan of my office with any questions at x 6791.

Thank you.

Representative Ralph Samuels

## Sponsor Statement CSHB90(JUD)

**“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” and “hindering prosecution of murder” to the list of crimes for which the statute of limitations do not apply. Currently, the statute of limitations for both offenses 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 these categories 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 for a felony sex offense 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.**

CSHB90(JUD)  
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" and "hindering prosecution of 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 these crimes, 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 for felony sex offenses. 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.

# Alaska Hit Summary Report 1/1/06 - 5/8/07

| <u>Hits</u>                 | <u>State</u> |             |              | <u>National</u> |             |              | <u>TOTAL</u> |
|-----------------------------|--------------|-------------|--------------|-----------------|-------------|--------------|--------------|
| <u>Case to Case</u>         | <u>Cold</u>  | <u>Warm</u> | <u>Total</u> | <u>Cold</u>     | <u>Warm</u> | <u>Total</u> |              |
|                             | <b>18</b>    | <b>7</b>    | <b>25</b>    | <b>2</b>        | <b>0</b>    | <b>2</b>     | <b>27</b>    |
| <u>Case to Offender</u>     | <b>32</b>    | <b>19</b>   | <b>51</b>    | <b>5</b>        | <b>0</b>    | <b>5</b>     | <b>56</b>    |
| <u>Totals</u>               | <b>50</b>    | <b>26</b>   | <b>76</b>    | <b>7</b>        | <b>0</b>    | <b>7</b>     | <b>83</b>    |
| <u>Investigations Aided</u> |              |             |              |                 |             |              | <b>64</b>    |

## Alaska DNA Profiles

|                |   |
|----------------|---|
| <b>TOTAL :</b> | <b>10,982 Current Offender Profiles</b> |
| <b>2005</b>    | <b>6,027 entered</b>                    |
| <b>2006</b>    | <b>1,374 entered</b>                    |
| <b>2007</b>    | <b>2 entered</b>                        |

**Current number of Samples**  
**waiting to be processed and entered:**

**2,740+**

**Approximately 68 new samples per week**

# 2007<sub>YTD</sub>

**Number of Offender Profiles added: 2**

**Number of Forensic Profiles added: 49**