

SB

110

<target><bill>SB 110</bill><subject>SB
110</subject><comm>HFIN26</comm></target>

Alaska State Legislature



Senator Hollis French

Sponsor Statement Senate Bill 110 Preservation of Evidence

The American system of justice is founded on balancing the twin protections of the rights of those harmed by crimes, and the rights of the accused. Criminal convictions are guided by evidence of innocence or guilt, and no one in the criminal justice system wants innocent people to be convicted of crimes they did not commit. The availability and use of physical evidence at trials and during appeals is a critical piece of a meaningful justice system.

Modern DNA technology, coupled with today's comprehensive information and communications technologies, has exponentially increased the power of preserved evidence. Preserved evidence can solve cold cases and prove or disprove claims of innocence in ways unimaginable just a few years ago. The problem is, however, that evidence collection and preservation policies have not always kept pace with these new technologies.

Senate Bill 110 begins to address this issue by requiring that biological evidence in murder and sexual assault cases is properly retained while cases are unsolved and during the period after conviction that an offender is imprisoned or required to register as a sex offender. The bill still provides for police departments to return or dispose of evidence too large to keep after portions of the material likely to contain biological evidence have been removed and preserved. The bill provides for a notice process in cases where evidence will be destroyed, and it establishes a temporary task force to look at other issues involved in this emerging field of technology and make recommendations on standards and practices in cataloging and handling evidence. The bill also provides for procedures for post-conviction DNA tests.

Recently in Denver, Colorado a young man who had been convicted of murder at the age of 15 and who served over a decade in prison was released and his conviction was vacated as a result of DNA evidence that proved his innocence. And in cases closer to home, DNA was used after 13 years to identify a suspect in the murder of Bonnie Craig, a UAA student. The preservation of evidence is a vital and effective way to ensure the criminal justice system meets its goal of protecting the innocent and convicting the guilty. Join me in supporting this important bill.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSB 110(FIN)
 (S) Publish Date: 3/15/10

Identifier (file name): CSSB110-DPS-AST-03-10-10 Dept. Affected: Public Safety
 Title "An Act relating to the preservation of evidence." RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Senator French
 Requester Senate Finance Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
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	0.0

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

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.36.010 by adding a new section which requires the preservation of evidence in crimes listed under AS 11.41.100 - 11.41.130. This legislation will result in additional evidence being stored for a longer period of time. It is expected that the requirements of this bill will be manageable and have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial Phone 907-247-4480
 Division: Alaska State Troopers Date/Time 03-10-10 / 4:00
 Approved by: Joseph Masters, Commissioner Date 3/10/2010
Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSSB 110(FIN)
(S) Publish Date: 3/15/10

Identifier (file name): CSSB 110(JUD) Dept. Affected: Public Safety
Title: Preservation of Evidence RDU: Statewide Support
Component: Laboratory Services
Sponsor: Senator French
Requester: Senate Finance Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Darwin Peterson
Senate Finance Committee
Approved by: Co-Chair Bert Stedman/Co-Chair Lyman Hoffman

Phone 465-3873/465-4453
Date/Time 3/12/10 8:30 AM
Date _____

Adopted 4/12/10

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: House CS for CSSB 110 (JUD)

Page 8, lines 19-20:

Delete "(A) is not inconsistent with a defense presented at trial; and

(B)"

AMENDMENT #1

*Adopted
4/12*

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: House CS for CSSB 110 (JUD)

Page 8, lines 19-20:

Delete "(A) is not inconsistent with a defense presented at trial; and

(B)"

2010 HOUSE FINANCE
VOTE CALL

DATE: _____

Amendment: _____

MEMBER	Favor	Oppose
REP. JOULE	✓	
REP. KELLY		✓
REP. SALMON	✓	
REP. THOMAS		✓
REP. AUSTERMAN		✓
REP. DOOGAN	✓	
REP. FAIRCLOUGH		✓
REP. FOSTER	✓	
REP. GARA	✓	
REP. HAWKER	✓	
REP. STOLTZE		✓

YEA 6
NAY 5

Governor Parnell's
Strategic Plan to End the Epidemic of Sexual Assault and
Domestic Violence

PURPOSE

Within a decade, end the epidemic of sexual assault and domestic violence and make Alaska the national leader in fighting these scourges.

STRATEGIC OBJECTIVES

1. Break the cycle of abuse using a comprehensive public education and prevention campaign to promote a culture of respect that does not tolerate violence against women and children.
2. Deter, segregate, and treat sex offenders so they pose no risk of harm to women and children.
3. Improve public safety by establishing a law enforcement presence in every community that desires one.
4. Increase availability of victim services so more victims have a safe place to go and the services they need to heal.
5. Coordinate and streamline efforts among all stakeholders to more effectively combat violence against women and children.

GUIDING PRINCIPLES

- A culture of responsibility – the answers and resources cannot come from government alone
- Community ownership over solutions
- Partnership between NGOs and state, local, federal, and tribal organizations
- Culturally tailored programs
- Youth leadership in developing and executing programs
- Support only programs with proven effectiveness

Relevant to
HB 324
SB 110
SB 222

- Use metrics to measure success

SUPPORTING GOALS

- Heighten public awareness of the problem
- Make violence against women and children culturally unacceptable
- Evaluate, develop, and implement prevention programs and continue to support programs with proven effectiveness
- Enact legislation that will enhance public safety
- Increase the proportion of incidents reported and suspects arrested, prosecuted, and punished
- Lower recidivism levels
- Make law enforcement more responsive through training
- Ensure shelter beds or safe houses are available to every person in need
- Link victims to medical care, legal services, and opportunities to establish independence from abusive relationships

CRIME STATISTICS

- The Alaska per capita rape rate is the worst in the nation -- two and half times the national average. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- Rape is a greater percentage of all violent crimes reported in Alaska than it is nationally, at 12% of all violent crime in Alaska compared to 6% of violent crime in the United States. *Source: Alaska Senate Judiciary Committee's Report and Recommendations: Reducing Sexual Assault in Alaska (2009).*
- The Alaska per capita child sexual assault rate is also the worst in the nation -- almost six times the national average. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- Outside of Anchorage, 55% of sexual assault victims are under the age of 15; 30% are between 13 and 15 years old and 25% of victims are between 6 and 12 years old. *Source: Studies by Alaska State Troopers and Anchorage Police Department, compiled by UAA Justice Center (2009).*

- Alaska has the highest rate per capita of men murdering women. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- In nearly one-quarter of sexual assault cases the victim was incapacitated due to alcohol or drug use. *Source: Alaska Sexual Assault Nurse Examiner Study, Reprinted in Andre Rosay, Sexual Assault in Alaska: Slide Show Presentation to Alaska State Legislature Senate Judiciary Committee (August 2009), available at <http://justice.uaa.alaska.edu/vaw/2009-08.jc-vaw-sexualassault.pdf>.*
- Two-thirds of domestic violence victims reported that alcohol had been a factor. *Source: U.S. Department of Justice, Bureau of Justice Statistics, Crime Characteristics: Summary Findings (2009), available at http://www.ojp.usdoj.gov/bjs/cvict_c.htm.*
- Boys who witness domestic violence are twice as likely to abuse their own partners and children when they become adults. *Source: Strauss, Gelles, and Smith, Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families (1990).*
- Villages with law enforcement presence have a 40% lower rate of serious injury caused by an assault compared to villages without local law enforcement. *Source: Wood and Gruenwald, Local Alcohol Prohibition, Police Presence and Serious Injury in Isolated Alaska Native Villages (2006).*

IMPLEMENTATION

I. BREAK THE CYCLE OF ABUSE USING A COMPREHENSIVE EDUCATION AND PREVENTION CAMPAIGN TO PROMOTE A CULTURE OF RESPECT THAT DOES NOT TOLERATE VIOLENCE AGAINST WOMEN AND CHILDREN

A. Statewide Education Efforts

Rationale: All members of society must consider violence against women and children unacceptable, and all must believe it is something that can be stopped. Schools, media, and high-profile public engagements can be used to transmit the message that sexual assault and domestic violence are intolerable in our society and that every individual and group must identify its role in combating these problems.

1. Develop, coordinate, and broadcast public service announcements. For example, the Governor, the Department of Public Safety (DPS), the Department of Law, and the Council on Domestic Violence and Sexual Assault (CDVSA) have coordinated with the Alaska Network

on Domestic Violence and Sexual Assault (ANDVSA) to launch the "Real Alaskan Men Choose Respect Campaign."

2. Cabinet members engage in public outreach to raise awareness and change attitudes about sexual assault and domestic violence. For example, the Governor held a major press event to highlight the epidemic. The Attorney General has discussed the epidemic in speeches and has been interviewed by reporters and talk show hosts. DPS Commissioner Masters frequently speaks throughout the state about the Governor's initiative and the epidemic.
3. Engage communities in awareness-raising events to show united opposition against domestic violence and sexual assault. On March 31, 2010, marches and rallies will be held in communities throughout the state in order to raise awareness of the problems and build support for victims.
4. Develop partnerships with Alaska Native organizations to work together on prevention solutions. An excellent example is CDVSA's Tribal and State forums, which seek to devise programs and strategies to break the cycle of violence.

B. Locally-Targeted Education Efforts

Rationale: In order to reduce violence against women and children, we need to prevent violence before it occurs rather than intervening after injury occurs. To do this we must develop a prevention strategy seeking to bring about change in individuals, relationships, communities, and society. Cultural change is most effective from the ground up and requires a coordinated effort among local communities, nonprofits, and government.

1. Work with tribal, non-profit and religious organizations to raise awareness of the problem, especially among youth, and stigmatize violence against women and children. Under the legislature's guidance, CDVSA is in the process of developing and implementing a plan to "promote education and programs to prevent future incidents of domestic violence and sexual assault." And, as discussed in more detail below, the Governor's budget requests the creation of a coordinator to lead the initiative to combat sexual assault and domestic violence. Part of the coordinator's portfolio will be to take a leading role in these outreach efforts.
2. Cultivate youth leaders through schools and community groups and incorporate youth leaders in developing primary prevention strategies. For example, CDVSA partners with the ANDVSA in developing prevention programs for schools and youth.

II. DETER, SEGREGATE, AND TREAT OFFENDERS SO THEY POSE NO RISK OF HARM TO WOMEN AND CHILDREN

A. Enact Legislative Changes To Protect Alaskans

Rationale: Alaska needs tougher laws to send a message that violence against women and children will not be tolerated and to ensure that offenders no longer pose a risk to others, either because they are behind bars or because they have been rehabilitated. Although the Alaska legislature has already enacted stringent laws, more can be done to punish offenders and protect victims.

1. Toughen penalties for crimes of sexual assault by making it an aggravating factor if the defendant sexually assaulted the victim while knowing the person was vulnerable due to use of alcohol or drugs. The Governor has sponsored SB 222 and HB 298 to make it an aggravating factor if the defendant was convicted of any crime and the defendant knew that the victim was vulnerable due to use of alcohol or drugs.
2. Expand laws to protect children from online sexual predators. The Governor has sponsored SB 222 and HB 298, which prohibit suspended imposition of sentences for people convicted of human trafficking, possession or distribution of child pornography, and distribution of indecent materials to minors. These bills make it against the law not just to possess child pornography but also to access it on a computer with the intention of viewing it. The bills also empower courts to prohibit sex offenders, in cases involving children, from using a computer or communicating with children under 16 years old.
3. Enhance protection and processing of DNA and other forensic evidence to ensure the actual perpetrator is held accountable. To help accomplish this goal, the Governor has sponsored HB 317 and SB 241, which adopt standards for evidence retention and post-conviction DNA testing. The Senate Judiciary Committee Report found that proper examination of DNA evidence is critical to sexual assault prosecutions and that the backlog in getting the evidence processed is causing significant delays in prosecuting cases.
4. Close loopholes that allow convicted sex offenders from other states to escape registering in Alaska. SB 222 and HB 298 provide that if a person is registered as a sex offender in other states, he must register

here, even if the sex crime he was convicted of does not have an exact equivalent in Alaska.

5. Modify the bail statutes to protect the victims of the crime and the general public. The Governor has introduced a bail reform bill that seeks to accomplish this goal. Under this bill, a person charged with serious crimes like felony sexual assault or, if the person has a domestic violence conviction within the preceding five years, with a domestic violence offense, would have burden of proof to establish that his or her release would not be dangerous to the victim or the public. The bill would also ensure the person's appearance in certain cases. Currently, the State has the burden to make this showing.

B. Improve Prosecution

Rationale: Bringing offenders to justice deters future violent acts and sends a strong message that violence against women and children is unacceptable. While most prosecutions result in guilty pleas or convictions, increasing the rates at which incidents are reported and referred for prosecution will help us hold more offenders accountable. Creating a law enforcement presence in every community will also deter violence, increase reporting rates, and improve evidence collection necessary for more and more successful prosecutions.

1. The Governor's budget requests \$75 million for a new crime lab to help us process the evidence needed to win convictions in sexual assault cases and \$92.8K for a forensic scientist at the crime lab
2. Department of Law has issued specific prosecution policies and guidelines for sexual assault and domestic violence cases
3. Prosecutors are being trained in tough plea negotiations, and the Governor's budget seeks an additional \$75K for additional training.
4. The Department of Law has hired a cybercrimes prosecutor to prosecute child pornography offenses and other internet crimes.
5. DPS has reorganized its Computer and Financial Crimes Unit so that investigators can focus solely on computer crimes against children.
6. The Governor's budget requests \$2.3 million in General Funds to make permanent 17 prosecutor and victim-witness paralegal positions at the Department of Law, which were previously funded on an interim basis through federal grants.

7. The Governor's budget requests \$656,000 in General Funds to make permanent DPS's cold case unit, which had been funded by federal grant money.
8. To ensure forensic evidence is gathered, the Governor's budget requests \$12.3K for 350 pediatric sexual assault kits and \$150K for adult sexual assault exams. The Senate Judiciary Committee report found that when victims receive a medical forensic exam, it more than doubled the likelihood that the case was accepted for prosecution.

C. Reduce Recidivism Rates

Rationale: The majority of batterers return to their families, and the cycle of violence continues unbroken. It is in the state's interest to reduce recidivism. Otherwise, victims will continue to be harmed and offenders will continue to be arrested and imprisoned at the state's expense. Programs to reduce recidivism will help heal families and save the state money in the long run.

1. The Department of Corrections (DOC) is working collaboratively with DPS's Village Public Safety Officer (VPSO) program to provide effective supervision for probationers and parolees in rural communities.
2. The Criminal Justice Working Group is reviewing ways to improve DOC's prisoner re-entry programs, including after-care programs for substance abuse treatment, halfway house beds, mental health clinicians in correctional facilities, re-entry case workers, and coordination among stakeholders.
3. The Criminal Justice Working Group is reviewing reforms to the probation system to reduce recidivism rates by imposing swift punishments for probation violations. According to the Senate Judiciary Committee Report, nationally 45% of prisoners serving time for rape or sexual assault committed their crime while on probation or parole.

III. IMPROVE PUBLIC SAFETY BY ESTABLISHING A LAW ENFORCEMENT PRESENCE IN EVERY COMMUNITY THAT DESIRES ONE

A. Add 150 More VPSO Positions Over the Next Ten Years

Establishing a law enforcement presence in every village that desires one will prevent offenses from happening and facilitate investigation and prosecution for the offenses that do occur. UAA Justice Center studies show that in villages where a VPSO was available, rates of serious assault declined 40% and a case was over three times more likely to be prosecuted. But increasing

the number of VPSO positions alone will not suffice. Local communities must collaborate by identifying qualified candidates, providing VPSO facilities, and supporting the VPSO's work.

1. The Governor's budget requests adding 15 VPSOs per year (at cost of \$1.26 million annually) for 10 years so that every community of a certain size that desires a VPSO shall have one if the community puts forward a qualified individual. The Governor's budget also requests a merit increase (\$129.9K) for VPSOs and an increase in the VPSO cost-of-living-adjustment (\$93.9K).
2. To secure housing for VPSOs, the Governor's budget requests \$1 million for VPSO housing grants and loans in AHFC programs.

B. Hire Additional Investigators for Sexual Assault Investigations

Rationale: Maintaining VPSOs in rural communities will increase safety and ensure incidents of violence are investigated promptly. However, in many cases additional resources will be required to investigate, collect evidence, and prepare cases for referral to prosecutors. By hiring troopers specifically trained to investigate sexual assault and domestic violence incidents, we will maximize the number of incidents that result in convictions, ultimately deterring future offenders.

1. The Governor's budget requests \$500K for three additional Alaska State Troopers to investigate sexual assault and domestic violence offenses.
2. Eight additional investigators will be hired using federal money. Three of these investigators will be hired by municipal governments to work with Alaska State Troopers on multijurisdictional task forces.

IV. ENSURE VICTIMS HAVE A SAFE PLACE TO GO AND THE SERVICES THEY NEED TO HEAL

A. Increase Availability of Civil Legal Services for Victims

Rationale: A study conducted by economists found that increased provision of legal services for victims of domestic violence contributes to the decline of domestic violence rates. Civil legal services offer victims help with practical matters – like protective orders, custody disputes, and child support – that give victims options and increase their safety over the long term.

1. Increase the number and skill of attorneys who volunteer their services to victims of domestic violence. To accomplish this goal, LAW has

held over a dozen meetings with legal service providers, victim advocates, and the court system to find ways to increase legal representation for victims, and will continue to work with all stakeholders in increasing legal representation for victims.

2. Obtain commitments from leading Alaska law firms to devote a certain number of hours every month to pro bono legal work on behalf of victims of domestic violence and sexual assault. The Attorney General has begun an outreach effort to the legal community to meet this goal.
3. The Governor's budget requests an additional CINA attorney (at a cost of \$200K) to remove children from violent homes.

B. Increase Shelter Capacity to Meet Needs of Battered Women

Rationale: The ability to leave a dangerous situation and have a safe place to stay will reduce the number of violent incidents. Further, counseling services provided by shelters inform victims of their rights and options to escape abusive relationships. Increasing facilities and training staff will enhance shelters' ability to provide these crucial functions.

1. The Governor's budget requests an additional \$381,000 to increase the shelter capacity to better house, counsel, and treat victims, so that they can escape abusive situations.

V. COORDINATE AND STREAMLINE EFFORTS AMONG STAKEHOLDERS

A. Hire a Coordinator to Lead the Initiative Against Domestic Violence and Sexual Assault

Rationale: Effective efforts to address the problems of domestic violence and sexual assault exist, but more can be done to coordinate between government agencies, tribes, NGOs, and other stakeholders to improve and streamline these efforts. A coordinator would expand and improve state government's capacity to address sexual assault and domestic violence, provide a link between these stakeholders, and identify and obtain new resources.

1. The Governor's budget requests \$200K to create a new coordinator position that will oversee this comprehensive plan to end the epidemic of domestic violence and sexual assault. More specifically, the coordinator will establish partnership and form work groups with NGOs, tribal entities, and federal agencies to maximize effectiveness and minimize duplication in efforts to combat domestic violence and sexual assault.

2. The coordinator will consult with stakeholders to develop and implement additional programs to carry out the Governor's initiative.
3. The coordinator will improve the state's existing programs and efforts as they relate to domestic violence and sexual assault, including prosecution, corrections, provision of services to victims, and education.
4. The coordinator will work with CDVSA, DPS, and the UAA Justice Center (or other research organizations) in developing and executing the research necessary for baseline data and for evaluating the success of the initiative's programs.

Addendum: Budget

The budget pieces of the plan at this point in time include all the efforts that were in the base budget for FY 10, i.e., funding for DPS, LAW, CDVSA, sex offender treatment in DOC and in DHSS for juveniles, etc. **PLUS** new increments of:

- \$200K Child Protection Attorney in Kenai
- \$2.2M Prosecutors and staff who work primarily on sexual assault and domestic violence cases. Making these positions permanent and funding them with state dollars. We cannot afford to lose these resources.
- \$200K SA / DV Coordinator
- \$656.5K Cold case unit – Critical unit to solving homicides, many of which involve domestic violence and sexual assault. We cannot afford to lose these resources.
- \$150K Sexual assault exam costs
- \$75K SA / DV Prevention training
- \$500K 3 SA / DV investigators at DPS
- \$381.9K Shelters
- \$651.4K Replace decline in convicted felons' PFD funds, which are forfeited to CDVSA
- \$12.3K 350 pediatric sexual assault kits
- \$92.8K Forensic scientist at the crime lab
- \$129.9K Merit increases for VPSO positions
- \$93.9K VPSO cost-of-living-adjustment
- \$1.261.5 15 new VPSOs
- \$75M Crime Lab
- \$1.0M VPSO housing loans and grants
- \$86K New and improved crime lab equipment

Addendum: Recent Actions Taken To End the DV/SA Epidemic

- CDVSA has devised a strategic plan to develop prevention programs
- The Network, in collaboration with the State, has launched a PSA campaign
- To devise metrics that will measure the initiative's outcomes, cabinet members have met with the United Way and the Alaska Mental Health Trust; LAW is working on forming a committee to monitor the initiative's impact on domestic violence and sexual rates
- DPS has received federal Recovery Act funding for five investigators in the Alaska Bureau of Investigation and three municipal investigators for multi-jurisdictional task force and is in the process of hiring
- The Department of Law has hired a new cybercrime prosecutor
- DPS has reorganized its Computer and Financial Crimes Unit so that investigators can focus solely on computer crimes against children
- The Criminal Justice Working Group is reviewing ways to reduce recidivism through improved prisoner re-entry services and by imposing swift and consistent penalties for probation violations
- The Attorney General has discussed the epidemic of domestic violence and sexual assault in speeches, has conducted several radio interviews, and has been interviewed by editorial boards and reporters
- CDVSA has acquired \$290K in the FY 2010 budget for research and studies
- The Attorney General and Commissioner Masters have met with DOJ officials to raise awareness and secure funding for programs

Addendum: Proposed Legislation

- **Changes In Crimes and Sentences Involving Sexual Assault and Domestic Violence**
 - This bill would make 5 important changes to our current laws:
 - Prohibit suspended imposition of sentences for people convicted of human trafficking, possession or distribution of child pornography, and distribution of indecent materials to minors;
 - Make it against the law not just to possess child pornography but also to access it on a computer with the intention of viewing it;
 - Courts could prohibit sex offenders, in cases involving children, from using a computer or communicating with children under 16 years old;
 - Sentences for sex offenses could be increased through new “aggravating factors,” including the defendant’s knowledge that the victim had consumed drugs or alcohol, or a previous dating relationship with the victim;
 - Anyone required to register as a sex offender in another state would have to register in Alaska.

- **A Revision of Bail Laws**
 - A comprehensive review of our bail statutes has not occurred since the 1960s; reorganization and updating of this law is overdue.
 - Although the substantive provisions are generally similar to current law, there are some differences.
 - Under this bill, a person charged with serious crimes, like a sexual assault felony or a defendant charged with domestic violence who has been convicted of domestic violence within the five preceding years, would have burden of proof to establish that his or her release would not be dangerous to the victim or the public, and would assure the person’s appearance in certain cases.
 - Currently, the State has the burden to make this showing.
 - The bill also provides that once convicted of sex-related felonies, perpetrators could not be released pending sentencing or an appeal.

- **Specific Procedures for Post-Conviction DNA Testing**

- This bill is prompted by the State's victory in the *Osborne* case.
 - The bill adopts new requirements for preservation of evidence and biological material in certain cases by all law enforcement agencies in the state.
 - It also adopts a procedure for a person convicted of a felony against a person to apply for post-conviction DNA testing.
 - More specifically, the bill requires municipal police departments, courts and state agencies to retain DNA evidence for post-conviction testing and cold case prosecution.
- **The Alaska Scientific Crime Detection Laboratory in Anchorage**
 - The state would issue \$75 million in certificates of participation for the lab in order to effectively conduct examinations of evidence and expedite the processing of a large backlog of evidence in criminal cases. Using certificates of participation spreads the cost out over time so that both this generation of Alaskans and the next will help pay for this important facility and reap its benefits.
 - Over 50% of submitted cases to the Crime Lab are related to sexual assault or domestic violence.
 - The new lab will DPS to bring in cutting edge technologies and DNA techniques

Alaska State Legislature

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Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

HCS for CSSB 110 (JUD) EVIDENCE RETENTION AND POST-CONVICTION DNA TESTING Sectional Analysis

Sections 1 and 2 are conforming amendments to clarify that the evidence retention provisions in the bill take precedence over the provisions of AS 12.36.010 - 12.36.090 that address disposition of evidence in various circumstances, including disposal of unclaimed property.

Section 3 proposes a new statute in AS 12.36, Preservation of Evidence, that would require municipal police departments, the Department of Public Safety, the Department of Law, and the Alaska Court System to preserve both physical evidence and biological evidence for the periods described below. The highlights include:

- The retention requirements apply to an investigation and prosecution of homicide (murder, manslaughter, and criminally negligent homicide), sexual assault in the first degree, and sexual abuse in the first degree.

Because this is a new (and unfunded) duty imposed on municipal agencies in addition to state agencies, the bill was drafted to apply to a limited number of offenses; the offenses are the most likely to include evidence with DNA as part of the investigation and prosecution.

- Requires evidence (not including biological material) to be retained until the crime is solved or for fifty years.

The bill allows agencies to preserve samples of evidence if the item itself is impractical or hazardous to preserve. It recognizes that municipal police agencies will have varying storage capacity; that is, a rural agency will have a smaller storage ability than a larger municipality. The bill requires each agency to adopt written policies addressing removal and preservation of samples.

- Requires biological material to be retained by an agency until the defendant is unconditionally discharged for the crime (including any period of probation or parole), the period the person is required to register as a sex offender, or until the period for retention of physical evidence have expired, whichever is longer.

Biological material is defined to include the contents of a sexual assault examination kit, all human bodily material collected in the investigation, slides, swabs, or test tubes containing human bodily material, and swabs or cuttings from other evidence that contain human bodily material.

- The bill adopts a procedure for an agency, after notice to the parties and their attorneys, to dispose of or return evidence or biological material if no party objects to the disposal or return of the evidence or biological material. If there is an objection, it allows the agency to request the court to allow the disposal or return of evidence or biological material.
- The remedy for an agency's failure to preserve evidence and biological material is left to the court.
- The bill prohibits a person from bringing a civil action against an agency for a good faith failure to abide by the new requirements.

Section 4 requires that a person who seeks post-conviction DNA testing to support a claim of innocence bring the application for testing under AS 12.73, proposed in the bill.

Section 5 clarifies practice in the area of post-conviction relief by putting in statute the common law rule that requires an applicant to plead a prima facie case for post-conviction relief, and the court make a finding that a prima facie case has been pled before the state responds. Then the parties may pursue discovery on the matter. *State v. Jones*, 759 P.2d 558, 565-566.

Section 6 adopts procedures for post-conviction DNA testing. These include the following:

- **Sec. 12.73.010** sets out the information that must be included in an application for post-conviction DNA testing. The applicant must file
 - An affidavit by the applicant that states
 - that the applicant did not commit the crime for which he was convicted or any lesser included offense;
 - that the applicant did not solicit another person to commit, or aid or abet another person in planning or committing, the offense or any lesser included offense;

- that the applicant did not admit or concede guilt for the offense under oath in an official proceeding except that the court may in the interest of justice waive this requirement; the entry of a plea of guilty or nolo contendere is not considered an admission or concession of guilt for purposes of this requirement;
 - An affidavit by the applicant or the applicant's lawyer stating the results of each DNA test already performed on evidence in the prosecution of the defendant;
 - An affidavit by the applicant or the applicant's lawyer describing previous efforts to obtain DNA testing;
- **Sec. 12.73.020** provides the standards for when a court may order post-conviction DNA testing. These include:
 - The applicant was convicted of a felony against a person (AS 11.41);
 - Completion of the affidavits required by AS 12.73.010 have been submitted;
 - The applicant has not admitted or conceded guilt in an official proceeding (with the same exceptions as state in the corresponding section above);
 - Either
 - The evidence has not been tested;
 - The evidence has been previously tested, the applicant is requesting a more probative test; or
 - The court determines that granting the application is in the best interest of justice;
 - The evidence has been retained under conditions that ensure that it has not changed in a way that would undermine the accuracy of the test;
 - The applicant proposes a defense theory not inconsistent with the defense at trial, and that would establish innocence;
 - If the defendant was convicted at trial, the identity of the perpetrator was an issue;

- That the testing requested will produce new evidence that would support the new defense theory and raise a reasonable probability the applicant did not commit the offense;
 - The applicant consents to give a DNA sample and to have that sample entered into the DNA identification registration system; and
 - The application is timely.
- **Sec. 12.73.030** allows for summary dismissal by the court if the application does not include the information required. If the application is not summarily dismissed the prosecuting authority has 45 days to file a response.
 - **Sec. 12.73.040** adopts presumptions regarding timeliness. There is a presumption that filing an application within three years after conviction is timely; this may be rebutted if the application is repetitive. There is a presumption that an application filed later is untimely; these may be rebutted for any other good cause.
 - **Sec. 12.73.050** adopts procedures for collecting DNA samples. It also provides that the testing must be performed at a laboratory operated by the state or approved by the state. The cost of testing will be paid for by the state; if the applicant requests additional testing, the applicant must pay for it, and it must be performed at an accredited laboratory or one approved by the Department of Public Safety.
 - **Sec. 12.73.060** clarifies that the prosecution and an applicant may stipulate to DNA testing without following the procedures in the bill.
 - **Sec. 12.73.090** includes definitions for the new chapter.

Section 7 provides that an indigent applicant is entitled to representation by the Public Defender Agency in bringing an application for post-conviction DNA testing.

Sections 8 - 12 make clarifying amendments to the DNA identification registration system statutes. The bill clarifies that a minor must be 16 years of age or older at the time of offense for the minor's DNA to be entered into the database. It also requires that the Department of Public Safety remove a DNA sample entered into the database if the individual was found not guilty for the offense that was the basis of the DNA entry. The bill also makes several draft changes to improve the readability of the law.

Section 13 provides that a DNA sample from the registration system may be used in a criminal investigation if it was mistakenly in the system, if the error was made in good faith. Section 13 also clarifies that if a sample does not include sufficient material to obtain an accurate identification, another sample may be taken.

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Section 14 notes the effect the bill has on Rule 35.1, Alaska Rules of Criminal Procedure.

Section 15 creates a task force to consider and recommend standards for preservation of evidence. The task force would consist of the attorney general, the commissioner of public safety, a chief of police from a community not on the state's road system, a chief of police from a municipal department, the state medical examiner, representatives from the crime laboratory, the victims' advocate, the public defender, a member of the Alaska senate, a member of the Alaska house of representatives; a representative of the office of public advocacy, and a representative of the Alaska Innocence Project and the Alaska Native Justice Center.

The task force's work would be to recommend standards for collection, storage, organization, cataloging, disposal, return to owners, and retrieval of evidence; identify sources of financial help for implementing the standards; recommend minimum qualification and training of persons responsible for storing evidence. After completing its work, the task force will report its recommendations to the legislature.

Sections 16 - 19 include applicability and effective date provisions.