

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3168

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HB

88

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 88(STA)
 (H) Publish Date: 2/21/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to TV's and monitors in motor RDU Criminal
vehicles. Component Criminal Justice Litigation
 Sponsor Representative Gatto
 Requester House State Affairs 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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill prohibits a person from driving a motor vehicle with a TV type monitor installed that is visible to the driver, if the monitor is operating while the vehicle is being driven. It also prohibits installing such a monitor or altering a monitor that so that a monitor is visible to the driver while operating the vehicle. There are several exceptions, such as GPS or other equipment or safety displays. The penalty for the new crime of operating a vehicle while a monitor visible and playing depends on the harm caused. If no injury results from the offense, it is a class A misdemeanor. If, for example, a person sustains serious physical injury, the offense is a class B felony. The penalty for installation or alteration is a class A misdemeanor. The department does not anticipate any significant fiscal impact.

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

Phone 465-5427
 Date/Time 2/6/07 7:20 AM
 Date 2/6/2007

adopted 4/25/07
N/D

25-LS0312\O
Luckhaupt
3/12/07

CS FOR HOUSE BILL NO. 88()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GATTO AND GRUENBERG, Lynn

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to televisions, monitors, portable computers, and similar devices in
2 motor vehicles; relating to the definition of physical injury for the Alaska Uniform
3 Vehicle Code; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 28.35 is amended by adding a new section to read:

6 Sec. 28.35.161. Driving a motor vehicle with a screen device operating;
7 unlawful installation of television, monitor, or similar device. (a) A person
8 commits the crime of driving with a screen device operating if

9 (1) the person is driving a motor vehicle;

10 (2) the vehicle has a television, video monitor, portable computer, or
11 any other similar means capable of providing a visual display that is in full view of a
12 driver in a normal driving position while the vehicle is in motion, and

13 (3) the monitor or visual display is operating while the person is
14 driving.

1 (b) A person may not install or alter equipment described in (a)(2) of this
2 section that allows the images to be viewed by the driver in a normal driving position
3 while the vehicle is in motion.

4 (c) Subsections (a) and (b) of this section do not apply to

5 (1) portable cellular telephones or personal data assistants being used
6 for verbal communication;

7 (2) equipment that is displaying only

8 (A) audio equipment information, functions, and controls;

9 (B) vehicle information or controls related to speed, fuel level,
10 battery charge, and other vehicle safety or equipment information;

11 (C) navigation or global positioning;

12 (D) maps;

13 (E) visual information to

14 (i) enhance or supplement the driver's view forward,
15 behind, or to the sides of the motor vehicle for the purpose of
16 maneuvering the vehicle; or

17 (ii) allow the driver to monitor vehicle occupants seated
18 behind the driver;

19 (F) vehicle dispatching and response information for motor
20 vehicles providing emergency road service or roadside assistance;

21 (G) vehicle dispatching information for passenger transport or
22 freight or package delivery; or

23 (H) information for use in performing highway construction,
24 maintenance or repair, or data acquisition by the Department of Transportation
25 and Public Facilities or a municipality.

26 (d) Subsections (a) and (b) of this section do not apply to devices and
27 equipment installed in an emergency vehicle. In this subsection, "emergency vehicle"
28 means a police, fire, or emergency medical service vehicle.

29 (e) It is an affirmative defense to a prosecution under (b) of this section that
30 the equipment installed or altered includes a device that, when the motor vehicle is
31 being driven, disables the equipment for all uses except those described in (c) of this

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section.

(f) A person who violates (a) of this section is guilty of

(1) a class A misdemeanor, unless any of the circumstances described in (2) - (4) of this subsection apply;

(2) a class C felony if the person's driving causes physical injury to another person;

(3) a class B felony if the person's driving causes serious physical injury to another person;

(4) a class A felony if the person's driving causes the death of another person.

(g) A person who violates (b) of this section is guilty of a class A misdemeanor.

* Sec. 2. AS 28.90.990(a) is amended by adding a new paragraph to read:

(29) "physical injury" has the meaning given in AS 11.81.900.

* Sec. 3. This Act takes effect September 1, 2007.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

State Capitol
Juneau, AK 99801-1182

Representative Carl Gatto

Representative Max Gruenberg

Sponsor Statement and Sectional Analysis

CSHB 88 (JUD) Version "L" (25-LS0312L) – Televisions and Monitors in Motor Vehicles

Sponsor Statement

The purpose of the bill is to prevent operators of motor vehicles from watching television, video, and any other programming by making it a crime. Furthermore the bill makes it a crime to install a device capable of being viewed while the vehicle is in operation. This bill is similar, in most respects, to the version of HB 12 that passed the House last year. CS HB 88 Version "K" passed the House Judiciary Committee and is now identified as Version "L".

Sectional Analysis

Section 1 amends AS 28.35 by adding a new section as follows:

Paragraph (a) sets forth the general rule that a person shall not drive a motor vehicle while watching a television, video monitor or other type of video display. The elements of "driving with a screen operating" are 1) a person is driving a motor vehicle, 2) the video display can be viewed by the driver while seated in a normal driving position, and 3) the video display is operating.

The crime covers any equipment creating a visual display, whether it is installed or hand held. This change was made from the House State Affairs committee substitute that dealt with installed and hand held equipment slightly differently. In that version, installed devices only had to be operating in the driver's view while the motor vehicle is in motion, while, for hand held devices, such as cellular telephones and personal data assistants, the driver actually had to be watching or reading from the visual display while driving to constitute a violation. With the change in paragraph (a), installed and hand held equipment are dealt with in the same manner.

Paragraph (b) prohibits installing or altering a video display in a motor vehicle that allows the images to be viewed by the driver while the vehicle is moving.

Paragraph (c) provides specific exemptions to the general rule excluding cell phones and personal data assistants that are used for verbal communication, aides to navigation, visual displays for operational safety, for dispatch information, like those found in taxi cabs. Another exemption for displays for state and local highway construction and road repair was added in House State Affairs Committee.

Paragraph (d) makes it clear that the bill is not intended to cover equipment installed in an emergency vehicles.

Paragraph (e) establishes an affirmative defense if the visual display becomes inoperable when the vehicle is moving.

Paragraph (f) states that a person who drives a vehicle in violation of the law is guilty of a class A misdemeanor;

- 1) it is a class C felony if, as a result of that violation, another person suffers a physical injury;
- 2) it is a class B felony if, as a result of that violation, another person suffers a serious physical injury;
- 3) it is a class A felony if, as a result of that violation, another person dies.

Paragraph (g) makes it a class A misdemeanor for a person to install equipment in violation of the law.

Section 2 of the bill defines "physical injury".

Section 3 of the bill sets forth an effective date of September 1, 2007.

LEGISLATIVE RESEARCH REPORT

SEPTEMBER 20, 2004



REPORT NUMBER 05.011

STATE LAWS REGARDING TELEVISIONS, DVD PLAYERS, AND OTHER ELECTRONICS INSTALLED IN VEHICLES

PREPARED FOR REPRESENTATIVE LES GARA

BY CHERIE NIENHUIS, LEGISLATIVE ANALYST

You asked about DVD players in vehicles. Specifically, you asked about state or federal laws regarding the installation of DVD players in vehicles and the viewing of videos by drivers. You also requested information about how other states have resolved issues of illegal installation and viewing of video displaying devices in vehicles.

As you may know, the State of Alaska recently brought murder charges against a man who lost control of his vehicle and collided with another vehicle, killing both occupants.¹ The State sought the charge of second-degree murder because the driver was allegedly watching a video on his vehicle-installed DVD player when the accident occurred, a charge he denies. To be convicted of second-degree murder charges in this case, the State had to prove that the defendant "knowingly" engaged in conduct that caused another's death, and that such conduct displayed an "extreme indifference to the value of human life."² Although the jury ruled in favor of the defendant, the case drew nationwide attention as possibly the first of its kind—one in which serious criminal charges were filed against a driver whose attention was allegedly diverted from the road to a distracting electronic device—one of many such devices currently available for installation in automobiles.

Digital video disc (DVD) players join a growing list of electronic devices being modified for use in vehicles, causing concern that drivers are more distracted than ever before. Lawmakers in almost every state have considered bills to prohibit or modify the use of cellular phones while driving, but because there is still considerable debate as to whether talking on a cell phone is any more distracting than changing the dial on a car radio, few of the measures have passed. Regardless of the origin, distractions contribute to 25 percent of vehicle crashes each year—

¹ *State v. Petterson*, 3KN-03-00886CR, filed 5/12/2003. We include an MSNBC article describing the case as Attachment A.

² AS 11.41.110(a)(2); and Associated Press, "Alaska Crash Trial Focuses on DVD Player," FOXNews.com, July 27, 2004.

about 4,000 per day—reports the National Highway Traffic Safety Administration. Many lawmakers fear that the additional availability and affordability of in-vehicle electronic gadgets, such as TV monitors and DVD players, will exacerbate the distracted driving problem that already exists and result in higher accident rates.

STATE LAWS ON IN-VEHICLE TELEVISIONS, DISTRACTIONS

According to a list published in the *AAA Digest of Motor Laws 2004*, 37 states and the District of Columbia have laws or regulations that prohibit TV viewers, screens, or other such receiving equipment from being in a location visible to the driver.³ Section (a) of Alaska's regulation on in-vehicle TV equipment, 13 AAC 04.260, reads as follows:

A motor vehicle driven in this state may not be equipped with television-type receiving equipment located where the viewer or screen is visible from the driver's seat.

Section (c) of the code exempts equipment used for safety or law enforcement purposes, thereby allowing the use of Global Positioning System (GPS) and Loran systems for navigational purposes. This is a common exemption among states.

A violation of the above regulation, as well as of most such laws and regulations in other states, is generally treated like a minor traffic offense, and is punishable by a fine.

Many state laws, however, do not address other video displaying devices, such as DVD players. This was a distinction noted by attorneys in the criminal case, *State v. Petterson*, described above. Alaska law does not currently prohibit DVD players and other video displaying devices from being located within view of the driver's seat. The proliferation of in-vehicle devices has prompted state lawmakers to examine current laws and adapt them, if necessary, to the changing technological landscape. California and Texas are two states that have expanded their laws to include DVD players and other electronic devices; others, such as New York and Louisiana, have considered similar bills. We include copies of the California and Texas laws as Attachments C and D, respectively.

According to Matt Sundeen, Transportation Analyst, National Conference of State Legislatures, although Congress has held hearings on driver distraction issues, no federal laws currently target in-vehicle electronics of this nature.⁴

Some jurisdictions are choosing to strengthen and expand distracted driving laws; one such law is that enacted by the District of Columbia. The District's Distracted Driving Safety Act of 2004 now includes as distractions activities like reading, writing, performing personal grooming, and interacting with pets or unsecured cargo. A person found guilty of distracted driving in D.C. is fined \$100.⁵

³ We include a copy of the list as Attachment B.

⁴ Matt Sundeen can be reached at (303) 364-7700.

⁵ A15-311, the Distracted Driving Safety Act of 2004, is included as Attachment E.

INDUSTRY, CONSUMER, AND LAW ENFORCEMENT INTERESTS

Not surprisingly, the Consumer Electronics Association (CEA) opposes legislation that prohibits the installation or use of mobile video equipment. In its official policy statement, the CEA recommends that TV or video monitors that are placed in view of the driver be installed so that they will only function when the vehicle is in park or when the parking brake is applied. If the monitors are to function without application of the brake, or when the vehicle is in some other gear than park, the CEA recommends installation where they will not be visible to the driver.

Most monitors are equipped with the safety features noted by the CEA, and only function when the vehicle is in park or the parking brake is applied, in effect, preventing their operation when the car is moving. Sources point out, however, that the safety features are easy to bypass, and safety circumventions of this type are not uncommon in vehicles where consumers have installed the devices themselves.

Other in-vehicle electronic devices, such as those installed to aid in navigation, actually enhance driving safety because they lessen the dependence on maps and road signs for directions, industry and consumer groups maintain, leaving drivers free to concentrate on the road. Many state laws exempt such systems from the driver visibility prohibitions applied to other electronic equipment.

Despite the increased regulation, mobile electronics sales are booming. According to an article posted in the *Christian Science Monitor*, sales of in-vehicle DVD players in 2003 increased 50 percent from 2002 sales figures, with 180,000 of the devices sold at a price of \$2,000 to \$4,000 apiece.⁶ Industry representatives predict that in the future, drivers will not only be reminded electronically to pump the vehicle's tires and change the oil, but they will also be able to check real-time stock quotes and weather, all from a small dashboard screen.

Industry officials contend that there is no need to craft new legislation every time a mobile electronic device is introduced because most states already have distracted driving laws. Law enforcement personnel agree with this argument in theory, but point out that in practice, proving that a driver is distracted is very difficult. According to Captain Allen Storey, Alaska State Troopers, most people involved in car crashes do not volunteer details, such as that they were talking on their cell phone, when accidents occur.⁷ As such, the devices are easier to regulate than the behavior, Captain Storey notes.

Alaska Administrative Code could be amended to include prohibitions for the placement of DVD players and other in-vehicle entertainment devices, following proper administrative procedures. Captain Storey indicates that the State Troopers would recommend that motorists violating the regulation be fined. If, however, a driver causes an accident and is subsequently discovered to have violated the regulation, Captain Storey believes stiffer penalties should apply.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁶ Eric C. Everts, "New Perks in Driver's Seat: Films on DVD," *Christian Science Monitor*, August 6, 2004. We include a copy of this article as Attachment F.

⁷ Captain Allen Storey can be reached at (907) 269-5682.



Station: PO Box 231110, Anchorage, Alaska 99523-1110
Physical: 807 Green 231110, Anchorage, Alaska 99523-1110
Business Office: 800 Greenwood Dr., Anchorage, Alaska 99518

"Going Your Way 24 Hours a Day"

Dear: Representative Gruenberg

We are in the taxicab dispatch business in Anchorage Alaska and are afraid this proposed bill will put our company out of business. We are the largest taxicab dispatch company in Alaska and cannot do it without our computerized digital dispatch system. Since installation of our system the crimes committed against taxicab drivers in Anchorage has significantly declined. The car accident rates have also declined. Overall it has made cabs in Anchorage safer and more efficient.

I drafted a possible way to amend HE 12 so it will not restrict commercial vehicles utilizing computerized digital dispatch systems for package and passenger service. I think the intent of this bill is to prevent the viewing of DVDs the internet or video technology from distracting the driver of vehicles in motion. I feel this is a worthwhile bill as long as it does not prevent established commercial businesses to use custom designed digital dispatch equipment.

Wireless technology is advancing at a very rapid rate. I feel that customers who have this equipment and are willing to use it only in the backseat of a taxicab should be acceptable as long as it is out of view of the driver of the vehicle while the vehicle is in motion. There are a consider amount of riders who do use laptop computers and portable DVD players in taxicabs at this time. I feel it is wise to put a provision in this bill which allows this technology to be used by passengers located "out of the drivers view" in the behind the driver seating of the vehicle.

Below I have authored a draft of a possible amendment to this bill which will give make this bill reasonable for commercial business such as ours:

Computerized equipment used in commercial motor vehicles with the principal design, configuration and function for use in mobile vehicle digital dispatching exclusively for passenger transportation or package delivery service is allowed. Vehicles must be in compliance with all local and state regulated licensing requirements. If computerized equipment contained in commercial vehicles has the capability of two way internet web based video communication and/or has the ability to display copywrited motion video, then this equipment must be configured to blank out the screen from the view of the driver at all times when the vehicle is in motion. All internet based computers and video players intended for passenger use must be used only in seating located behind the driver of the vehicle and the screen must at all times when the vehicle is in motion be kept from the view of the driver.

You may also want to include a requirement for all commercial passenger carrying vehicles to display a sign inside with reads as follows:

WARNING: Use of portable computers or video equipment in the view of the driver while vehicle is in motion is prohibited and fineable by law.



Mailing: PO Box 21110, Anchorage, Alaska 99521-1110
Physical: 6707 Greenwood Dr., Anchorage, Alaska 99518
Business Office: (907)-562-6805 Dispatch: (907)-229-9999

"Going Your Way 24 Hours a Day"

Your consideration in the needed changes to this bill will be greatly appreciated.

Sincerely, Dean Paul (Co- Owner of Alaska Yellow Cab)

LESSMEIER & WINTERS

LAWYERS - LLC

VINTAGE BUSINESS PARK
3000 VINTAGE BOULEVARD
SUITE 100
JUNEAU, ALASKA 99801

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

TELEPHONE: (907) 796-4999
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E-MAIL: l-w@gcl.net

VIA HAND DELIVERY

February 2, 2007

The Honorable Carl Gatto
Alaska House of Representatives
State Capitol, Room 108
Juneau, Alaska 99801-1182

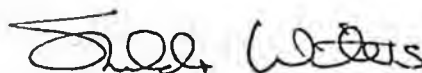
The Honorable Max Gruenberg
Alaska House of Representatives
State Capitol, Room 110
Juneau, Alaska 99801-1182

Re: House Bill 88

Dear Representative Gatto and Representative Gruenberg:

State Farm Insurance supports House Bill 88. If there is any information or assistance we can provide in getting this legislation passed, please let me know. Thank you for sponsoring this bill.

Sincerely,



Sheldon E. Winters
Lobbyist for State Farm Insurance Companies



February 23, 2007

Representative Max Gruenberg
House of Representatives
Alaska Legislature
State Capitol, Room 110
Juneau, AK 99801-1182

Re: SUPPORT: CS HB 88 (STA)

Dear Representative Gruenberg:

The recent explosion in popularity of television and LCD screens for both entertainment purposes as well as tracking automobile performance and navigation has created the need to reexamine the use of these devices in motor vehicles from a safety versus convenience perspective. RVIA believes that H.B. 88 provides a good balance between safety and convenience for the people of Alaska.

H.B. 88 takes into account the fact that RVs are used differently than other motor vehicles. Because RVs serve a dual purpose, they are designed to be both a motor vehicle and a temporary living facility. Occasionally, RV interiors are laid out with a television at the front of the coach. These televisions are used exclusively when the RV is parked and is serving as a temporary vacation home. Thus, RVIA supports the provisions of H.B. 88 that allow for televisions forward of the driver's seat so long as that TV is equipped with a device that renders the TV inoperable while the vehicle is under way. Again, H.B. 88 achieves the balance of safety while driving with convenience while parked on an RV vacation.

As I am sure you are aware, adventurous Americans who take RV vacations represent a large and important type of tourism in Alaska. RVers spent an estimated \$3.8 billion in local American communities from May through August of 2004 camping, visiting state and national parks, attending sporting events, visiting relatives and taking other forms of vacation while staying in their RVs. H.B. 88 allows for the boost to local economies that RV tourism brings.

RV enthusiasts were also pioneers in the global positioning satellite (GPS) phenomenon. RV manufacturers and dealers have been installing GPS in RVs for nearly 10 years and according to National Highway Traffic Safety Administration (NHTSA) Fatal Accident Reports (FARs) statistics, RVers have continued to be the safest drivers on the road during this time. GPS devices allow all drivers to reach their destination with more accuracy, efficiency and safety. H.B. 88 exempts GPS devices as well as screens that only report vehicle information such as miles per gallon being consumed and temperature in the cabin from prohibitions against video screens in the view of the driver.

The language contained in H.B. 88 has the enthusiastic support of RVIA and the entire RV industry. We urge swift passage of this good public policy which will make Alaska's roads safer and also make Alaskan RV vacations both safer and more convenient for the 30 million American RV owners and renters.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Wald", is written over a horizontal line.

Matt Wald

Director of Government Affairs

RECREATION VEHICLE INDUSTRY ASSOCIATION

1896 Preston White Dr. Reston, VA 20191-4363 P.O. Box 2999 Reston, VA 20195-0999 Tel: 703/620-6003 Fax: 703/620-5071 www.rvia.org

Norman Cohen

From: Matt Wald [mwald@rvia.org]
Sent: Wednesday, February 28, 2007 10:17 AM
To: Norman Cohen
Subject: RE: RVIA support of HB 88

RVIA has reviewed and strongly supports CS HB 88 () Version K.



February 23, 2007

Representative Carl Gatto
House of Representatives
Alaska Legislature
State Capitol, Room 108
Juneau, AK 99801-1182

Chairman
J. MORTON, Jr.
Nissan

President
M. STANTON

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- Hitachi
- JAMA
- Yazaki

Representative Max Gruenberg
House of Representatives
Alaska Legislature
State Capitol, Room 110
Juneau, AK 99801-1182

Dear Representatives Gatto and Gruenberg:

Re: **SUPPORT: CS HB 88 (STA)**

I am writing on behalf of the Association of International Automobile Manufacturers, Inc., (AIAM) which is a trade association representing 14 motor vehicle manufacturers accounting for over 40 percent of all light duty vehicles produced annually in the United States.

AIAM members have invested over \$36 billion in U.S.-based production facilities, have a combined domestic production capacity of 3.7 million vehicles, directly employ over 95,000 Americans, and generate additional U.S. jobs in dealerships and supplier industries nationwide. AIAM members include Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, Mitsubishi, Nissan, Peugeot, Renault, Subaru, Suzuki and Toyota. AIAM also represents original equipment suppliers and other automotive-related trade associations.

I am pleased to inform you that AIAM supports CS HB 88(STA) as approved by the House State Affairs Committee. This "screen device" bill will help prevent distracted driving while at the same time allowing drivers to use important technology like navigation systems, vehicle information displays and exterior view monitors which can assist drivers.

Please contact Michael Cammisa of my staff if you have further questions or need additional information about AIAM's position on CS HB 88(STA). Thank you for your consideration of AIAM's views.

Sincerely,

Michael J. Stanton
President & CEO

Norman Cohen

From: Michael X. Cammisa [MCammisa@AIAM.ORG]
Sent: Tuesday, February 27, 2007 1:19 PM
To: Norman Cohen
Subject: AIAM Supports CS HB 88 version K

Norman –

I reviewed version K of CS HB 88 that I received today via fax. AIAM does not object to the changes that have been made in comparison to CS HB 88 (STA) as approved by the House State Affairs Committee. Therefore AIAM supports version K of CS HB 88 for the same reasons as indicated in our letter of February 23, 2007 supporting CS HB 88 (STA).

If you need additional information or a more formal letter, please let me know.

Best regards,
Mike

*Michael Cammisa
Director, Safety
Association of International Automobile Manufacturers, Inc.
2111 Wilson Boulevard, Suite 1150
Arlington, Virginia 22201
703/247-2105 (direct)
703/525-7788 (main)*



The Web Site of The Sacramento Bee

This story is taken from **Sacbee / News**.

Laptop use while driving blamed for fatal crash

Bee Metro Staff -

Published 12:00 am PST Tuesday, February 27, 2007

A 28-year-old Chico man was killed Monday after he lost control of his car while working on his laptop computer while driving, according to the California Highway Patrol.

"We have reason to believe he was operating his laptop because it was still on and plugged into the cigarette lighter," said CHP Cmdr. Scott Silsbee.

Shortly after 8:35 a.m., the CHP received a report of a head-on crash on Highway 99 south of Yuba City between O'Banion Road and Highway 113.

The crash closed lanes in both directions for nearly two hours and traffic was diverted to alternate routes while a helicopter transported an injured couple to Rideout Hospital and work crews cleared the debris.

The name of the Chico man, who was driving a Toyota Corolla, was not released pending the notification of his relatives.

According to officers, Michael Layson and his wife, Christine, both 39, were southbound at the speed limit in their Hummer.

A driver of a southbound Honda told officers the northbound Toyota veered into his path and that he had to slow and swerve to avoid it. The Hummer, which was directly behind the Honda, slammed into the Toyota.

The Laysons, who live in Yuba City, were treated and released from the hospital with bumps and bruises, Silsbee said.

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⊕ **13 AAC 04.260. Television receivers and headsets**

⊕ (a) A motor vehicle driven in this state may not be equipped with television-type receiving equipment located where the viewer or screen is visible from the driver's seat.

(b) A driver of a motor vehicle may not wear a headset, headphones, or other headgear designed for receiving sound and transmitting sound to the driver, or wear ear plugs or a similar device which reduces the driver's hearing ability while driving a vehicle.

(c) This section does not prohibit the use of television-type or headgear-receiving equipment used exclusively for safety or law enforcement purposes, used for and designed to improve a driver's hearing ability, or navigational devices such as Global Positioning System (GPS) or Loran.

⊕ **History: Eff. 12/31/69, Register 31; am 6/28/79, Register 70; am 2/8/98, Register 145**

⊕ **Authority: AS 28.05.011**



State of California Code regarding televisions and video monitors in motor vehicles

27602. (a) A person may not drive a motor vehicle if a television receiver, a video monitor, or a television or video screen, or any other, similar means of visually displaying a television broadcast or video signal that produces entertainment or business applications, is operating and is located in the motor vehicle at any point forward of the back of the driver's seat, or is operating and visible to the driver while driving the motor vehicle.

(b) Subdivision (a) does not apply to the following equipment when installed in a vehicle:

(1) A vehicle information display.

(2) A global positioning display.

(3) A mapping display.

(4) A visual display used to enhance or supplement the driver's view forward, behind, or to the sides of a motor vehicle for the purpose of maneuvering the vehicle.

(5) A television receiver, video monitor, television or video screen, or any other, similar means of visually displaying a television broadcast or video signal, if that equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display as described in paragraphs (1) to (4), inclusive.

(6) A mobile digital terminal installed in a vehicle owned or operated by an electrical corporation, as defined in Section 218 of the Public Utilities Code, a local publicly owned electric utility, as defined in Section 9604 of that code, a gas corporation, as defined in Section 222 of that code, or a telephone corporation, as defined in Section 234 of that code, if the mobile digital terminal is fitted with an opaque covering that does not allow the driver to view any part of the display while driving, even though the terminal may be operating.

(c) Subdivision (a) does not apply to a mobile digital terminal installed in an authorized emergency vehicle or to a motor vehicle providing emergency road service or roadside assistance.

(d) Subdivision (a) does not apply to a mobile digital terminal installed in a vehicle owned or operated by an electrical corporation, as defined in Section 218 of the Public Utilities Code, a local publicly owned electric utility, as defined in Section 9604 of that code, a gas corporation, as defined in Section 222 of that code, or a telephone corporation, as defined in Section 234 of that code, when the vehicle is deployed in an emergency to respond to an interruption or impending interruption of electrical, natural gas, or telephone service.

HB

90

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 16, 2007

FURTHER REFERRALS:

Date of Committee Action: 4-24-07

The FINANCE Committee considered:

HB 90

HOUSE BILL NO. 90

BAIL

"An Act relating to bail."

Recommends it be replaced with [] HCS or [X] CS for HB 90 (FIN)
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____ [~~X~~] Same Title [X] New Title

- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of Abbrev for Depts:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
COR			✓	

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	2			✓
ADM	3		✓	
ADM	4		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Gara			✓	
	Julie CRAWFORD	✓		X	
	Thomas Spitzer	✓			
	Hambl	★			
Chair:	KELLY	X			
Chair:	Meyer	✓			

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSHB90-DOC-A&O-4-18
Bill Version: CS HB90 (JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): 4/18/07 9:16am 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: Office of the Commissioner
Sponsor: Representatives 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	*	*	*	*	*	*
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 will have a fiscal impact due to passage of this legislation; however, it can not be determined at this time. The following is a sectional analysis for each section of this legislation that will have an impact to the department.

Section 1

If sex offenders on probation or parole violate conditions of their probation or parole and they no longer have time on their sentence, they will be charged with a class A misdemeanor. The department has no way to estimate the number of sex offenders that will be impacted by this change in legislation.

(continued on Page 2)

Prepared by: Sharlenn Griffin, Director Phone: (907) 465-3339
Division: Administrative Services Date/Time: 4/18/07 9:17 AM
Approved by: Dwayne Peeples, Deputy Commissioner Date: 4/18/2007
Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSHB90 (JUD)

ANALYSIS CONTINUATION

Section 6

The Court System is no longer placing offenders on electronic monitoring. The court's electronic monitoring program shows a decrease in approximately 80 offenders from August 2006 to March 2007. These offenders are now either being placed in the Department of Corrections custody or on third party custody. There are no data available showing where these offenders are being placed or for how long.

Section 7

The maximum period of probation will increase from 10 to 25 years for all sex offenders. This change will not affect the department's Statewide Probation and Parole component within the next six years, but will have an impact in future years when sex offenders are released onto probation or parole. The increase of time on probation will increase the number of probationers under supervision.

Section 10

A prisoner will no longer be granted a good time deduction for any period spent in a treatment program, a private residence or under electronic monitoring (EM). Offenders will no longer volunteer to be on EM when there is no incentive to be on the program. This will cause an increase in the number of offenders in the facilities or in a Community Residential Center. The department will also have increased costs for the offenders who are on EM for the longer period of time. Per Alaska Statute 33.30.065(d), the Commissioner may require a prisoner to pay all or a portion of the costs of the electronic monitoring but only if the prisoner has sufficient financial resources to pay the costs or a portion of the costs. When the offender does not have sufficient financial resources the department is responsible for the cost.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 90(JUD)
(H) Publish Date: 4/16/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title An Act relating to bail 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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0
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 Molners, Admin. Services Manager Phono 465-5427
Division Administrative Services Division Date/Time 3/23/07 12:07 PM
Approved by: Robert Molners for Tallis Colberg, Attorney General Date 3/23/2007
Agency Department of Law

FISCAL NOTE #2

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSHB 90(JUD)

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: 3
 Bill Version: CSHB 90(JUD)
 (H) Publish Date: 4/16/07

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.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 90(JUD)
(H) Public Date: 4/16/07

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 Stoltz
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

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.

2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 4-24-07

HB 90 Amendment: Concept. Amend 6

MEMBER

Favor

Oppose

MEMBER	Favor	Oppose
CRAWFORD	✓	
FOSTER		✓
GARA	✓	
HAWKER		✓
JOULE		✓
KELLY		
NELSON		
STOLTZE		✓
THOMAS		✓
<i>absent</i> CHENAULT		
MEYER		✓

Yea 2

Nay 6

withdrawn

25-LS0331V.5
Luckhaupt
4/24/07

AMENDMENT 5

OFFERED IN THE HOUSE
TO: CSHB 90(JUD)

BY REPRESENTATIVE GARA

- 1 Page 3, lines 29 - 30:
- 2 Delete "knew about but did not present"
- 3 Insert "without good cause did not disclose"

AMENDMENT

adopted

OFFERED IN THE HOUSE
TO: CSHB 90(JUD)

BY REPRESENTATIVE STOLTZE

Page 4, lines 30-31 and page 5, line 1:

Following "appearances" delete all material and insert the following:

“, meetings with counsel, and work required by the treatment program and approved in advance by the court;”

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.

with drawn

25-LS0331V.1
Luckhaupt
4/23/07

AMENDMENT

2

OFFERED IN THE HOUSE
TO: CSHB 90(JUD)

BY REPRESENTATIVE GARA

- 1 Page 1, line 5:
- 2 Delete "relating to certain post-conviction relief applications;"
- 3
- 4 Page 6, lines 12 - 19:
- 5 Delete all material.
- 6
- 7 Renumber the following bill sections accordingly.
- 8
- 9 Page 7, lines 1 - 4:
- 10 Delete all material.

Withdrawn

25-LS0331V.2
Luckhaupt
4/23/07

AMENDMENT

.3

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: CSHB 90(JUD)

- 1 Page 1, line 5:
- 2 Delete "relating to good time;"
- 3
- 4 Page 6, lines 20 - 23:
- 5 Delete all material.
- 6
- 7 Renumber the following bill sections accordingly.

With Drawn

25-LS0331VL.3
Luckhaupt
4/24/07

AMENDMENT

4

OFFERED IN THE HOUSE
TO: CSHB 90(JUD)

BY REPRESENTATIVE GARA

1 Page 3, lines 28 - 30:

2 Delete

3 "(A) the inability to post the required bail;

4 (B) information that the defendant knew about but did not
5 present at a previous bail review hearing"

6 Insert "the inability to post the required bail"

7

8 Page 4, line 2:

9 Delete "seven days [48 HOURS]"

10 Insert "42 hours"

Amendment 6 Conceptual
To HB 90 By Rep. Gara

filed
2-6

Page 6, Line 23

Insert new language to read after "monitoring":

Good time may be granted if the treatment program is:

- (1) satisfactorily completed; and
- (2) meets the standards in AS 12.55.027 (c)

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 Melroza 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 1/24/05.

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.

Bernatz 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!

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@legis.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: 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: //More Bail Hrg Stuff

Attached is a bail hearing on [redacted]. I had to dismiss a case on the day of trial because the victim passed away. She was an elderly lady who Le bilked close to \$40,000 dollars out of. [redacted] 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 [redacted]. If you do please email John Darnall a copy ASAP.
Thanks!

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
Assistant District Attorney
State of Alaska, Department of Law
Anchorage District Attorney's Office
310 K Street, Suite 520
Anchorage, Alaska 99501
907-269-6300 (office)
907-269-6321 (fax)
907-269-6373 (direct)

>>> Susan Parkes 11/15/2006 1:06:22 PM >>>

2 As much as I hate the numerous bail hearings that defendants 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 [redacted] 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

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. 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.) 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.) 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 Aaresth went on military leave. I then was successful in getting Judge Suddock to rule that "new information" must be something more that 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 Aaresth 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
MAH

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 [redacted]. I have an additional anecdote that I thought would be helpful. Defendant's name: [redacted] f [redacted] s. [redacted] 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 ball 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

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

Keri:
T-- / (Election day shooters)

Judge Rhoades reduced their bail from \$50K cash to \$25Kc/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: 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: Erin White
To: Keri Brady
Date: 1/24/2007 11:47:12 AM
Subject: Bail Issue

Keri,

[REDACTED] 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 [REDACTED] 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 [REDACTED] 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, [REDACTED], and her husband, [REDACTED], as TPCs. I did not oppose them, but I asked for a 10K cash posting, based on PO [REDACTED] 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 [REDACTED] 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 [REDACTED] 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.
Thank

Erin

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

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 - [redacted] neighbor and current TPC, Robin [redacted], called to report that [redacted] had walked away. She also reported that [redacted] and [redacted] ([redacted], his girlfriend) have been spending lots of time together.

[redacted] called [redacted] 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.

[redacted] 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, [redacted], a nurse at CIPT.

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

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. C am 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, [redacted] shot his girlfriend, [redacted], in the back with a .357 revolver at their home in Eagle River. Ms. [redacted] suffered a single gunshot wound to her upper left back, several broken ribs, a collapsed left lung and severe internal bleeding. Due to extensive life-saving medical care Ms. [redacted] 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 [redacted] as a third-party custodian but refused to lower the monetary bail or approve a second proposed third-party custodian, [redacted]. At a second bail hearing on 14 November 2006, Superior Court Judge Larry Card lowered [redacted]'s bail to \$15,000 cash/corporate over the State's objection. Cody Graham posted bail and was released to Ms. [redacted] custody. Ms. [redacted] and Mr. [redacted] were explicitly told that Mr. [redacted] was not to have any contact with Ms. [redacted] 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. [redacted] residence at [redacted] Avenue #1 and observed the victim's car parked outside. Other officers arrived and were allowed entry by [redacted]. Located inside [redacted]'s residence were F [redacted], Ms. [redacted] and Ms. [redacted]'s daughter, [redacted] vey. 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

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"

* 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

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 90(JUD)
(H) Publish Date: 4/16/07

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: 6
Bill Version: CSHB 90(JUD)
(H) Publish Date: 4/16/07

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 Statewide Probation and Parole
Sponsor Representatives Samuels
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

HB

90

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
 MAY 12 2007
 SENATE FINANCE COMMITTEE

DATE: 5/11/07

FURTHER:

DATE TURNED IN TO OFFICE: 5/12/2007

Finance Committee considered CS FOR HOUSE BILL NO. 90(FIN)

HB 90 CRIMES/CRIM PROCEDURE/SENTENCING

"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."

and recommends:

- be replaced with SCS or CS CS HB 90 (FIN)
 adopt previous SCS or CS CS FORTHCOMING
 attached amendment(s)
 adopt _____ Letter of Intent
 further referral to _____ Committee

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # 9

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DPS	5/11/07	\$540,000			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	3/23/07			<input checked="" type="checkbox"/>	2
Admin	2/9/07		<input checked="" type="checkbox"/>		3
Admin PD	3/27/07		<input checked="" type="checkbox"/>		4
COR	4/18/07		<input checked="" type="checkbox"/>		7

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Elton			<input checked="" type="checkbox"/>	
	Thomas			<input checked="" type="checkbox"/>	
	Dyson				<input checked="" type="checkbox"/>
	Olson			<input checked="" type="checkbox"/>	
	Huggins			<input checked="" type="checkbox"/>	
CO-CHAIR:	Hoffman			<input checked="" type="checkbox"/>	
CO-CHAIR:	Stedman			<input checked="" type="checkbox"/>	

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 90(JUD)
(H) Publish Date: 4/16/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title An Act relating to bail 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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

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 #2

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSHB 90(JUD)

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: 3
Bill Version: CSHB 90(JUD)
(H) Publish Date: 4/16/07

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 Phone: (907) 269-3501
Division: Office of Public Advocacy Date/Time: 2/7/07 1:30 PM
Approved by: Kevin Brooks, Deputy Commissioner Date: 2/9/2007
Agency: Administration

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.

FISCAL NOTE

REPORTED OUT
MAY 12 2007
SENATE FINANCE COMMITTEE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 90(JUD)
(H) Publish Date: 4/16/07

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 now 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 Poltro, 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: SCSHB090-DPS-LAB-5-11-07
Bill Version: SCS CSHB 90(JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title "An Act relating to credit toward service of a RDU Statewide Support
sentence of imprisonment; relating to violation of probation . . . Component Laboratory Services
Sponsor Representative Samuels
Requester Senate Finance Committee Component No. 527

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	305.5	313.5	321.5	329.5	337.5	345.5
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	122.3	14.8	14.8	14.8	14.8	14.8
Supplies	73.2	73.2	73.2	73.2	73.2	73.2
Equipment	31.0	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	540.0	409.5	417.5	425.5	433.5	441.5

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

FUND SOURCE	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
1002 Federal Receipts						
1003 GF Match						
1004 GF	540.0	409.5	417.5	425.5	433.5	441.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	540.0	409.5	417.5	425.5	433.5	441.5

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY2008 budget proposal:

POSITIONS

POSITIONS	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Full-time	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This legislation significantly expands the Alaska state crime lab responsibilities regarding DNA by requiring the collection of DNA from persons (not including minors) who have been arrested for qualifying offenses (crimes against persons or felonies under AS 11 or AS 28.35, or under a law or ordinance with similar elements) and suggesting a 90-day turnaround. The law presently allows for the collection of DNA only from persons who have been convicted of qualifying offenses, juveniles who have been adjudicated as delinquent for qualifying offenses, persons convicted of offenses that require sex offender registration, and persons whose DNA is collected for non-criminal purposes (e.g., voluntary donors and anonymous donors for validation and statistical purposes). The Department must take into consideration existing convicted offender backlog reduction (2740) while trying to meet a 90-day turnaround target for arrestee and convicted offender sample processing effective FY2009. contd. on page 2

Prepared by: David Schade, Director Phone (907)269-0202
Division Department of Public Safety Date/Time 5/11/07 5:04 PM
Approved by: Walt Monegan, Commissioner Date 5/11/2007
Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO.

SCS CSHB 90(JUD)

ANALYSIS CONTINUATION

This analysis assumes that this legislation is intended to apply only to adults who are arrested for qualifying offenses after the effective date of the legislation, and is not intended to apply to all adults against whom charges are pending at the effective date of the bill. Collecting DNA from adults who are arrested for qualifying offenses will require programming and data entry changes in APSIN, which is Alaska's criminal history system. The DNA indicator in APSIN, which presently can be entered on the APSIN record of each person from whom DNA is required (and is later updated to indicate when DNA is on file), must be modified to add that DNA is required from adults when they are arrested for a qualifying offense, and not only when they are convicted of a qualifying offense. This will require the development of different indicators. The APSIN arrest information must then be linked to the crime lab case management system (LIMS). This is necessary because crime lab personnel must determine the authority for submitting a sample so they can verify the sample and identify which section of the DNA registration system (the federal DNA database, CODIS) the analysis should be entered into: the qualifying conviction section or the arrestee section. The legislation requires that "the material in the system" (referred to here as samples) that is submitted upon arrest must be removed if no charges are brought, charges are reduced to reflect non-qualifying offenses, or they are dismissed. Presently it is rare to remove DNA samples from the database, since relatively few qualifying convictions are reversed. However, when samples are required at the time of arrest, programming and procedures for removing DNA from the database must be developed, because it is very common to reduce, amend, dismiss, or decline to charge on allegations that are initially brought upon arrest.

APSIN and LIMS programming changes and costs assume that (1) the existing DNA database (CODIS) can accommodate DNA submitted upon arrest; (2) modifications must be made to the APSIN replacement system that is currently being written; and (3) programming changes in other systems will be made and funded by those agencies. These are one-time costs that are included only in FY2008, although the costs could extend into FY2009 if other agencies make system changes that extend into FY2009 and must be integrated with APSIN. Programming includes the development of the web service (DPS to LIMS) by an Analyst/Programmer IV, which will take 1.5 months (already included in DPS budget); development of the web service by LIMS contractor (\$13,500); modifications to LIMS for notification, monitoring, and follow-up (\$20,000); modifications to APSIN (estimate based on previous DNA projects)(\$27,000); modifications to new APSIN (web service enabled system)(\$27,000); and an addition of interfaces to legacy APSIN due to obsolescent technology (\$20,000).

In addition to the programming changes, the increase in samples, the continuous entering and removal of samples, and a 90-day turnaround, will require additional personnel and resources at the crime lab. The estimated number of samples to be processed monthly will increase by 205 (2460 per year). This estimate was obtained by calculating the number of times a person was arrested under AS 11.41 (crime against a person), a felony under AS 11, or a felony under AS 28.35 with a disposition in APSIN over a two year period subtracting arrests of persons that would have been required to submit samples anyway because they were ultimately convicted of qualifying convictions or already were already required to provide a sample under the existing law based on prior convictions.

This increase of 2460 samples per year is approximately a 70% increase in the number of samples currently being processed by the lab. This would require a full-time (CODIS) administrator (\$103,800), 2 full time DNA Criminalist II analysts (\$72,700 per position, totaling \$145,400), and a full time Forensic Technician (\$56,300). Cost analyses for salary do include associated benefit packages and step increases have been pro-rated at a total for all 4 positions at \$8000 per year for FY2009 through FY2013. A travel allowance per PCN totals \$8,000 per year (\$2,000 each for training, testifying, etc). Each new PCN requires a computer and monitor at a one-time cost of \$8000 (\$2,000 per PCN that does include licensing and software).

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO.

SCS CSHB 90(JUD)

ANALYSIS CONTINUATION

Yearly basic office supplies and needs associated with each PCN total \$12,000 (\$3,000 per PCN). Contractual services associated with each PCN total \$14,800 (pro-rated at \$3,700 per PCN yearly). Lab equipment to accommodate the additional samples and the additional technicians will include an additional thermalcycler (\$8,000), an additional centrifuge (\$5,000), and additional secure on-site sample storage (\$10,000). Those items will not require additional maintenance agreements. Additional DNA sample kits (buccal swab kits), which are provided by the lab and mailed to the sites where samples are collected (principally corrections and AST field offices) are \$3.00 per kit. An additional 2750 kits will be distributed per year at a cost of \$8,300 for kits, and \$3,700 for postage, which is based on an average cost of mailing (\$13.50 per 100 kits). More kits are distributed than are collected, due to spoilage, errors, distribution uncertainties, etc. The cost of supplies (e.g. reagents) per sample is \$20 per sample, for a total of \$49,200 for 2460 samples per year.

REPORTED OUT
MAY 12 2007
SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 7
Bill Version: CSHB 90(FIN)
(H) Publish Date: 4/25/07

Revision Date/Time (Note if correction): 4/18/07 9:16am 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: Office of the Commissioner
Sponsor: Representatives 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
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 will have a fiscal impact due to passage of this legislation; however, it can not be determined at this time. The following is a sectional analysis for each section of this legislation that will have an impact to the department.

Section 1

If sex offenders on probation or parole violate conditions of their probation or parole and they no longer have time on their sentence, they will be charged with a class A misdemeanor. The department has no way to estimate the number of sex offenders that will be impacted by this change in legislation.

(continued on Page 2)

Prepared by: Sharleen Griffin, Director Phone: (907) 465-3339
Division: Administrative Services Date/Time: 4/18/07 9:17 AM
Approved by: Dwayne Peoples, Deputy Commissioner Date: 4/18/2007
Agency: Department of Corrections

FISCAL NOTE #7

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSHB 90(FIN)

ANALYSIS CONTINUATION

Section 6

The Court System is no longer placing offenders on electronic monitoring. The court's electronic monitoring program shows a decrease in approximately 80 offenders from August 2006 to March 2007. These offenders are now either being placed in the Department of Corrections custody or on third party custody. There are no data available showing where these offenders are being placed or for how long.

Section 7

The maximum period of probation will increase from 10 to 25 years for all sex offenders. This change will not affect the department's Statewide Probation and Parole component within the next six years, but will have an impact in future years when sex offenders are released onto probation or parole. The increase of time on probation will increase the number of probationers under supervision.

Section 10

A prisoner will no longer be granted a good time deduction for any period spent in a treatment program, a private residence or under electronic monitoring (EM). Offenders will no longer volunteer to be on EM when there is no incentive to be on the program. This will cause an increase in the number of offenders in the facilities or in a Community Residential Center. The department will also have increased costs for the offenders who are on EM for the longer period of time. Per Alaska Statute 33.30.065(d), the Commissioner may require a prisoner to pay all or a portion of the costs of the electronic monitoring but only if the prisoner has sufficient financial resources to pay the costs or a portion of the costs. When the offender does not have sufficient financial resources the department is responsible for the cost.

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS0331AN
Luckhaupt
5/12/07

SENATE CS FOR CS FOR HOUSE BILL NO. 90()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES SAMUELS AND STOLTZE, Hawker, Dahlstrom, Lynn, Ramras, Johnson, Neuman, Johansen

SENATORS Green, Therriault, McGuire, Dyrton, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the purchase of alcoholic beverages and to access to licensed
2 premises; relating to civil liability for certain persons accessing licensed premises;
3 requiring driver's licenses and identification cards to be marked if a person is restricted
4 from consuming alcoholic beverages as a result of a conviction or condition of probation
5 or parole and relating to fees for the marked license or card; relating to the information
6 contained on driver's licenses; requiring the surrender and cancellation of driver's
7 licenses and identification cards under certain circumstances; relating to prostitution;
8 relating to the DNA registration system; relating to credit toward service of a sentence
9 of imprisonment; relating to violation of probation and parole conditions by sex
10 offenders; relating to bail; relating to distribution of certain materials to minors;
11 relating to time limitations for prosecution of certain crimes; relating to sex offender
12 registration; relating to the maximum time for probation; relating to certain post-

1 conviction relief applications; relating to good time; and providing for an effective
2 date."

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

4 * **Section 1.** AS 04.16 is amended by adding a new section to read:

5 **Sec. 04.16.047. Access of persons with restriction on purchasing alcohol.**

6 (a) A person who is restricted from purchasing alcohol under AS 04.16.160 may not
7 knowingly enter or remain in premises licensed under this title to obtain or consume
8 alcohol.

9 (b) A licensee may bring a civil action against a person who violates this
10 section if the violation occurs on the premises of that licensee. If judgment is entered
11 in favor of the licensee, the court shall award civil damages in the amount of \$1,000
12 and award reasonable costs and reasonable attorney fees allowed under the Alaska
13 Rules of Civil Procedure.

14 (c) Nothing in this section or AS 04.16.160 creates a duty or imposes an
15 obligation on a licensee to physically check the identification of any person entering
16 licensed premises.

17 * **Sec. 2.** AS 04.16 is amended by adding a new section to read:

18 **Sec. 04.16.160. Restriction on purchasing alcoholic beverages.** (a) Except as
19 otherwise provided by law, a person who is 21 years of age or older may not purchase
20 alcoholic beverages if the person has been ordered to refrain from consuming
21 alcoholic beverages as part of a sentence for conviction of a crime under
22 AS 28.35.030, 28.35.032, or a similar municipal ordinance or as a condition of
23 probation or parole from a conviction under AS 28.35.030, 28.35.032, or a similar
24 municipal ordinance. The restriction on purchasing alcoholic beverages applies during
25 the period that the person is required to refrain from consuming alcoholic beverages
26 under the sentence or condition of probation or parole.

27 (b) A court imposing a restriction on a person under (a) of this section, and the
28 Department of Corrections, shall notify the person that an identification card issued
29 under AS 18.65.310 must list the restriction imposed for the period of the person's
30 probation or parole.

1 * Sec. 3. AS 04.21.050 is amended to read:

2 Sec. 04.21.050. Proof of age and of not being restricted from purchasing
3 alcoholic beverages. (a) If a licensee or an agent or employee of the licensee
4 questions or has reason to question whether a person entering licensed premises, or
5 ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to
6 procure alcoholic beverages,

7 (1) has attained the age of 21 years or is entering without consent in
8 violation of AS 04.16.049(a)(3) and has not attained the age of 16 years, that licensee,
9 agent, or employee shall require the person to furnish proof of age acceptable under
10 (b) of this section or proof of consent in a form determined by the board; if [. IF] the
11 person questioned does not furnish proof of age acceptable under (b) of this section, or
12 if a licensee, agent, or employee questions or has reason to question the validity of the
13 proof of age furnished, the licensee, employee, or agent shall require the person to sign
14 a statement that the person is over the age of 21 or 16 years, as appropriate; this [.
15 THIS] statement shall be made on a form prepared by and furnished to the licensee by
16 the board;

17 (2) is restricted from purchasing alcoholic beverages under
18 AS 04.16.160, the licensee, agent, or employee may, but has no duty or obligation
19 to, require the person to furnish proof acceptable under (b) of this section that
20 the person is not restricted from purchasing alcoholic beverages or require the
21 person to sign a statement that the person is not restricted from purchasing
22 alcoholic beverages under AS 04.16.160; this statement shall be made on a form
23 prepared by and furnished to the licensee by the board.

24 (b) Except as provided in AS 04.16.160, a [A] valid driver's license or a
25 valid identification card is acceptable as proof of age or that the person is not
26 restricted from purchasing alcoholic beverages when used for identification in the
27 purchase of alcoholic beverages and for securing entry to and remaining on premises
28 where alcoholic beverages are sold if the license or identification card is made of or
29 encased in plastic and contains a photograph of the licensee [LICENSE] or card holder
30 and a statement of age or date of birth. A licensee, agent, or employee may elect to
31 not accept a passport, military identification card, or other identification as proof

1 that the person is not restricted from purchasing alcoholic beverages and may
 2 require the person to furnish a valid driver's license or state identification card
 3 or otherwise furnish proof that the person is not a resident of this state.

4 (c) A licensee, or an agent or employee of the licensee, may not be charged for
 5 a violation of AS 04.16.047 - 04.16.052 [AS 04.16.051 - 04.16.052] if a signed
 6 statement as provided in (a) of this section is secured in good faith, or a valid driver's
 7 license or identification card is presented indicating that the owner and possessor of
 8 the presented driver's license or identification card is 21 or 16 years of age or over or
 9 is not restricted from purchasing alcoholic beverages, as appropriate.

10 * Sec. 4. AS 11.56 is amended by adding a new section to read:

11 **Sec. 11.56.759. Violation by sex offender of condition of probation or**
 12 **parole.** (a) A person commits the crime of violation by sex offender of condition of
 13 probation or parole if the person

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

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

17 (3) either

18 (A) violates a condition of probation imposed under
 19 AS 12.55.100(a)(5), (a)(6), or (c), 12.55.101(a)(1), or any other condition
 20 imposed by the court that the court finds to be specifically related to the
 21 defendant's offense; or

22 (B) violates a condition of parole imposed under
 23 AS 33.16.150(a)(3), (a)(4), (a)(6), (a)(13), (b)(4), (b)(14), or (f).

24 (b) In this section, "sex offense" has the meaning given in AS 12.63.100.

25 (c) Violation by sex offender of condition of probation or parole is a class A
 26 misdemeanor.

27 * Sec. 5. AS 11.61.128(a) is amended to read:

28 (a) A person commits the crime of electronic distribution of indecent material
 29 to minors if

30 (1) the person, being 18 years of age or older, knowingly distributes to
 31 another person by computer any material that depicts the following actual or