

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3195

77

c. **Public Education and Involvement Regarding a Long Range Fiscal Plan:**

- Municipalities should assist the Legislature and the Administration in educating the public through the use of local media, public forums, resolutions, creating local fiscal coalitions with local groups such as the PTAs and Chambers of Commerce, presentations at meetings of local organizations, one-on-one discussions with citizens, etc.
- The Administration must give Alaskans all the facts necessary to make decisions regarding a Long Range Fiscal Plan by developing written information, an interactive web site, meeting with local elected officials, etc.
- The Legislature should educate, inform and involve all citizens in these decisions regarding both fiscal and public service impacts through local forums, meeting with local officials, determining the impact of state budget actions on local taxes and services, and providing funding for schools to implement Alaska Civics and History to give young Alaskans information on how our government works.
- Together, municipalities, the Governor, and the Legislature should engage the public in a dialogue over the levels of public services that should be provided.

d. **Legislative Open Meetings:** To increase public understanding and support for legislative policy decisions, the legislature should hold open meetings to consider solutions for a Long Range Fiscal Plan.

e. **Community and Local Control Issues:**

- Revenue sharing or a Community Dividend is a component of the plan to maintain viable local communities with stable local taxes and services.
- Currently 102 of 163 municipalities depend on a sales tax of 1% - 7%. The League vigorously defends sales tax as a local option to maintain control over this key local revenue source. Imposition of a State sales tax would jeopardize local economics and cause a reduction in municipal sales tax.

f. **Components of the Long Range Fiscal Plan:**

There are two components that create a fiscal gap: revenue and spending.

1. **Spending:**

- a. **State Spending Limit:** It is important to recognize that a balanced financial plan must respond to the public's concern to control state expenditures targeting long term financial stability. To this end, the League supports a spending limit that provides such restraint, but also includes the flexibility to respond to changing conditions including population, inflation, loss of federal funds, federal mandates, and emergencies.
- b. **Sound Fiscal Policy:** The supplanting of general fund dollars with federal funds should only be done when it does not impair the effectiveness of a program in achieving its intended results, or its long-term viability should those federal funds at some point cease to supplant general fund dollars. Arbitrary replacement of state funds will serve as a disincentive to programs to diversify their sources of funding.
- c. **Accountability:** A strong emphasis should be placed on the efficient use and accountability of public funds.

2. **Revenue:** Consider new revenues and equitable fees for state services to reduce the drain on dwindling state reserves. Consultation between state and local government is essential before the adoption of a broad-based fiscal plan.

- a. **Income Tax:** Some form of a state income tax should be considered as part of an overall state fiscal plan. An income tax should include all wages earned in the State of Alaska regardless of residency.
- b. **Permanent Fund Earnings:** The League supports investment and payout policies that provide a consistent financial return, with a Percent of Market Value (POMV) endowment plan, that results in payment of stable dividends to citizens and revenue to support state and local government services.

- c. **Keep Sales Tax Local:** A state sales tax is strongly discouraged because it would jeopardize local economies, reduce municipal sales tax revenue, and interfere with the evolution of municipal sales tax codes and exemptions, which have been refined and tailored to individual communities.
- d. **Natural Resource Revenues**
 - **North Slope Natural Gas Pipeline:** The League strongly endorses the construction of an all Alaskan natural gas pipeline from the North Slope, including regional spurs as proposed by the Alaska Gas Pipeline Port Authority. The program should be structured in such a way to include a provision for a PILT program or other guaranteed mechanism for local municipalities to levy local taxes.
 - **Arctic National Wildlife Refuge (ANWR):** (Note: Also in Section Part IV Land Use, Resources, and Economic Development) The League urges the Congress of the United States to open the Coastal Plain of the Arctic oil reserve, including the Alaska Native Claims settlement lands, to environmentally responsible oil and gas exploration, development, and production and upon collaboration with the local residents. The League also strongly supports the 90-10 split of revenues as required by the Statehood Act. The League also urges the State of Alaska to redistribute federal mineral revenue sharing funds to local governments.

B. ADMINISTRATION OF MUNICIPAL GRANTS AND ENTITLEMENTS

1. Regulation of Grants and Entitlements

- a. The League supports simple and standardized grant and entitlement programs. The League opposes the addition of special conditions or regulations to grants and entitlement programs by state departments administering the grants when such conditions are not contained in the appropriation or the authorizing legislation. Further, legislatively authorized grant award time frames should not be reduced due to administrative grant management policies.
- b. The League further supports the reduction of all administrative fees deducted by state departments administering the grants programs, and supports direct expenditures for those services.
- c. The League opposes any restriction on the grantees' retention or use of interest earned on grant funds.

2. Maintaining the Integrity of Objective Project and Program Ranking Processes.

The League supports maintaining the integrity of objective state grant ranking processes, developed in cooperation with the legislature, municipalities and school districts. Such objective ranking processes include Capital Project Matching Grants, School Construction Grants, and Water and Sewer Construction Grants. Rather than substitute projects at the legislative level, the League supports revision of the prioritization criteria, as appropriate, to best reflect the needs of Alaskans.

C. LOCAL TAXES

1. Tax Levying Authority:

The League opposes any action that would diminish the existing statutory authority of local governments to raise needed revenues through the levy of taxes. The League opposes any efforts by the state that would reduce local tax bases or adversely affect the marketability of municipal bonds. The League supports legislation to remove the prohibition in AS 4.21.010. (c) that prevents local voters from approving a special tax on alcohol.



February 19, 2007

The Honorable Mike Hawker, Chair
House Special Committee on Ways and Means
Alaska State Capitol, Room 502
Juneau, AK 99801-1182

RE: HB 125 (House Special Committee on Ways and Means)--Support

Dear Chair Hawker:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Special Committee on Ways and Means to support your Committee bill HB 125.

HB 125 is a significant effort in establishing a long-range fiscal plan for Alaska.

HB 125 is an ambitious bill which, we hope, will provide some economic stability and guidance for our elected officials and our citizens.

When AARP considers our state budget, we follow a set of basic principles:

- Budget policy should promote economic growth and stability.
- Fairness across generations should be an important goal in formulating budget policy.
- Government should strive for balance during both economic expansion and contraction.
- Flexibility should be maintained and vulnerable populations (of any age) should be protected.
- Budget policymakers should be mindful of how their decisions impact other levels of government.

AARP believes that states should provide localities with the funding they need to meet their obligations. Passing responsibilities down to lower levels of government should be undertaken primarily to place services closer to the people being served and to maximize administrative efficiencies, not as a way to reduce costs. We do not support placing unfunded mandates on local government.

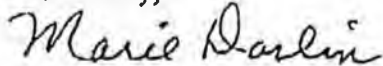
Many AARP members lived in Alaska when we had a state income tax. Many of our members live in communities that currently have a sales tax. Many have lived in other states that had both income and sales taxes. We understand that Alaska's fiscal situation, without a state income tax or a state sales tax, has often been subject to oil revenue going up and down. Hopefully HB 125 will help our elected officials and our citizens have a more accurate reading of Alaska's fiscal status and what to expect in the future.

AARP recommends an "AYE" vote on HB 125.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Anna Fairclough
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Sharon Cissna
Representative Max Gruenberg



PRESIDENT'S MESSAGE



GLEN "KNICK" KNICKFROCK
President

New year, new governor, new legislators – same priorities

Another election season has recently passed and our state Legislature will soon be convening to conduct our business. We have a new governor and several new faces in the Legislature but, based upon past experience, and in spite of all of the campaign rhetoric, we must question whether anything will really change or will it just be more of the same.

For several years AGC of Alaska has established a list of legislative priorities. These are not just priorities important to the construction industry, but are of importance to every business and individual in the state. As I review this list in preparation for our annual "Legislative Fly-In," it strikes me how little this list changes each year. Does this lack of change mean that those who we have supported and sent to Juneau to act on our behalf forget about what we deem important once the elections are over?

- **Long-term fiscal plan** – AGC, as well as numerous other groups and individuals, have repeatedly called upon our state Legislature and the administration to develop a fiscal plan based upon realistic revenues rather than continuing to spend based upon windfalls from temporary high oil prices and dreams of mega-projects to come. This plan should also address such huge unfunded liabilities as deferred maintenance on public facilities and the public employee's retirement plan.
- **Privatization of work done by the state** – Time and again we have expressed our concern that the state of Alaska, more specifically the Department of Transportation, performs work that could and should be done by private enterprise. Every year the amount of work the state takes away from private industry increases. Rather than working toward reducing the size of government, the bureaucracy just keeps getting larger.
- **Funding for vocational/technical education** – AGC has put a tremendous amount of effort into working

with our public education system, at all levels, to encourage vocational and technical education. We are proud and pleased with the few changes we have helped to bring about. But the fact remains that within two years of high school almost 80 percent of our young people enter the job market grossly ill-equipped. What does it say about our education system when it is 99 percent geared toward preparing 20 percent of high school graduates to attend college and offers comparatively little training for the 80 percent who will enter directly into the workforce?

- **State of Alaska transportation system** – There is little doubt that our influence at the federal level will suffer set-backs with our representatives now in the minority in both the House and the Senate. Unless you have had the opportunity to visit Washington, D.C., lately, it is hard to comprehend the damage Alaska has suffered due to the "Bridges to Nowhere" controversy. The days of enjoying a return from the federal government of more than \$5 for every \$1 contributed by the state are numbered. We need a long-range plan to continue to fund the much needed improvements to our transportation infrastructure. We cannot afford to hide our heads in the sand until lack of funding becomes a crisis to which we must react.

To paraphrase Albert Einstein, one definition of insane behavior is doing things the same way over and over and expecting different results. How many times are we going to go to Juneau with the same list and hope that maybe this time it will be different?

The public initiative process has been used to bring issues directly to the people. Maybe it is time to consider utilizing something similar to finally bring resolution to our list of priorities. Those who were recently elected promised things would be different if they were sent to Juneau. If our list is still the same next year I, for one, am ready to try something new.

To paraphrase Albert Einstein, one definition of insane behavior is doing things the same way over and over and expecting different results. How many times are we going to go to Juneau with the same list and hope that maybe this time it will be different?



Associated General Contractors of Alaska Legislative Priorities 2007

Long-term fiscal plan

It is in the best interests of the state of Alaska that the Legislature and administration adopt a long-term fiscal plan that deals with the issue of declining petroleum production, appropriate levels of taxation, utilization of the Alaska Permanent Fund and incentives to encourage new economic growth. In addition the serious problems that currently exist in the state retirement programs demand a long-term solution.

The long-term fiscal plan should also include an approach to the maintenance and enhancement of the capital assets of the state. Frequently capital budgets trumpet the addition of new facilities but fail to address the necessary maintenance and upkeep of existing facilities. Good stewardship requires that appropriate maintenance of existing facilities be incorporated within the operating budget while the expansion or enhancement of facilities can be accomplished in a capital budget.

The capital budget should also deal with the issue of utilizing the bonding capabilities of the state to address existing capital deficiencies. Repayment of general bonds however competes annually with operating funds so the quantity of bonded projects should not exceed the state's ability to fund the required annual payments. Undoubtedly a level exists at which the bonded debt optimizes the growth of the state without penalizing future operations or opportunities. The goal should be to use bonded debt up to that level but care should be exercised not to exceed the threshold.

State of Alaska transportation system

To realize its potential, Alaska needs a transportation system that considers all modes of transportation. As part of the mix to finance the construction of the system, the state should consider a combination of taxes and revenue bonds. Garvee Bonds should be used judiciously since they add no new money to Alaska's highway program, they merely accelerate expenditures of anticipated future receipts. Given the likelihood that Alaska's share of the "highway trust fund pie" will decrease in the future, Garvee Bonds represent an opportunity to spend non-existent dollars, thereby greatly diminishing the money available to maintain and expand the infrastructure of Alaska.

Further, the current transportation infrastructure of Alaska is inadequate and requires continued planning, upgrades and expenditures to assure the citizens of Alaska are provided with essential services. There is little doubt that the economic benefit derived from the investment in Alaska's transportation infrastructure far exceeds the matching funds required to secure the federal matching funds. Accordingly, the state is encouraged to not only continue providing full funding of

the federal highway matching funds but also start a consistent program of investment by the state in the program.

Privatization of work done by state

Each year, state workers undertake considerable work that could more efficiently be performed by the private sector. The governmental employees involved in these activities should be transferred to more traditional governmental roles and the work should be performed by the private sector.

From projects such as the reconstruction of airport roads to major maintenance work on transportation projects, the state of Alaska is employing state workers to perform work normally undertaken by the private sector. The justification that the state can perform the work more cost effectively ignores cost accounting realities. Perhaps the most condemning aspect of this endeavor is that legitimate work is withdrawn from a myriad of small Alaska businesses that depend on it. Without such work, the viability of these firms is threatened.

Funding for vocational/technical education

A majority of Alaska's high school graduates do not go to college yet the state's high school curriculum is oriented to college preparation. The state should adopt a more balanced funding approach to better prepare those students not pursuing post-secondary education for the world of work. The Workforce Investment Board has recently prepared a long-term strategy for meeting the projected shortfall in construction laborers. The strategy calls for increased funding for vocational training at the secondary level and a renewed emphasis at the post-secondary level to capture those who do not have the opportunity to receive such training at the secondary level.

In 2006, the Legislature took the first step and funded a pilot program at the King Career Center in Anchorage. The program represents a true public/private partnering effort and initial indications are that the model will help address the long-term labor needs of the construction industry. The program should be expanded to other schools in the state and the funding increased appropriately.

Currently, the state of Alaska has one and one half positions in the Department of Education and Early Development devoted to the students not pursuing a post-secondary education. As a consequence, these students are ill prepared for the world of work, have little idea of the opportunities available to them, and are not prepared to contribute to the economic growth of Alaska. The educational system of the state of Alaska is failing these students, their future employers, and constraining the growth of the state by not focusing on the needs of this valuable group of Alaskans.

James Garhart
January 8, 2008
Wasilla, Alaska

Senator Lyda Green
600 E. Railroad Ave.
Wasilla, Alaska

Dear Senator Green,

The enclosed two page proposal, The Garhart Plan, is a fiscal plan that I hope you will give consideration. As my State Senator and the Senate President you are in a position to change the way this State does its' fiscal matters.

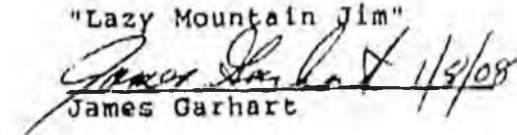
If you feel that getting the State General Fund Operating Budget and the States' share of the Capital Budget to a fully forward funded status, getting the Constitutional Budget Reserve debt paid in full, paying down the Pers/Ters debt, and freeing the State from its' dependency on oil revenues are worthwhile goals, then I hope my ideas help.

I would be very interested in any alternative proposals you will be introducing to accomplish similar fiscal goals.

Comments and constructive criticisms may be sent to the mail address on the enclosed plan or I can be reached at my work phone, M-F 9-5, 232-6212, or my non-work hour UNLISTED home phone 745-2430.

Sincerely,

"Lazy Mountain Jim"


James Garhart

The Lazy Mountain Jim Financial Independence Timetable Plan

Jan. 2008: Begin the process to annul the Constitutional Budget Reserve once it has been repaid in full.

Pass the 7/08-6/09 budget using 7/08-6/09 revenues as usual.

Save all 7/07-6/08 surplus. Invest it so it will earn a return yet remain available for the 7/10-6/11 budget.

October 2008: Pay the P.F.D. for residency year 2007 as usual with 7/07-6/08 P.F. earnings.

Jan. 2009: Pass the 7/09-6/10 budget funded with 7/09-6/10 usual revenues. Save the 7/08-6/09 surplus. Invest, but keep available for the 7/10-6/11 budget.

October 2009: Pay 2008 residency year P.F.D. as usual with 7/08-6/09 Permanent Fund earnings.

Jan. 2010: The last year of Governor Palins' first term and the pivotal year in which Alaska becomes financially independent.

1. Bundle the 7/07-6/09 surpluses together, borrow any amount needed from the earnings reserve so that the Constitutional Budget Reserve is repaid in full.

2. Annul the C.B.R. and use the @ \$7.5 Billion to pay back all funds borrowed from the earnings reserve. About \$7 Billion is left.

3. Pass the fully forward funded 7/10-6/11 General Fund Operating Budget and the States' share of the Capital Budget using the @\$7 Billion, leaving @\$1.5 Billion.

4. Change the P.F.D. check to a direct share from the sale of "our" resources.

5. October 2010: For residency year 2009 all P.F. D. qualified persons get a resource revenue share check. Pay with the remaining funds.

NOTE: No unrestricted resource revenues from 7/10-6/11 or unrestricted Permanent Fund earnings from 7/09-6/10 were spent.

Jan. 2011: The first year of the second Palin administration or the first year of the next Governors' administration.

Pass the 7/11-6/12 General Fund Operating and State share of the Capital budget using 7/09-6/10 Permanent Fund Earnings and the

7/10-6/11 "other taxes". You know, that \$4-5 Hundred Million collected from corporate income to new tire taxes.

Of course we pay the cost of the P.F. administration and inflationproofing the corpus before allocating the rest for the budget. We can however, increase the available funds by a statutory change crediting the amount of Art.9, Sect. 15 dedicated revenues deposited into the P.F. corpus towards the amount used for inflationproofing.

NOTE: No 7/10-6/11 P.F. earnings were used or 7/10-6/11 unrestricted resource revenues were used for General Fund Operating or State share of the Capital Budget.

October 2011: Pay residency year 2010 revenue share check using 7/10-6/11 resource revenues. The first year could be a large, one time amount, but then set a rate that would not attract newcomers.

January 2012: Repeat 2011 budget process and funding. Use the unspent 7/10-6/11 resource revenues, several Billion, to start a savings account. I suggest it be capped at \$2 Billion. It would only take a simple majority to access. Any year savings account funds were borrowed, then the total budget, including the borrowed funds, SHALL not exceed the previous years' total, and not inflation adjusted. Yes folks, an actual budget cut during lean years.

October 2012: Pay residency year 2011 resource revenue share check using 7/11-6/12 resource revenues. The remainder can be used for the savings account and for Pers/Ters debt reduction.

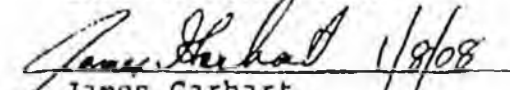
January 2013; Repeat

January 2014: Repeat

In this, the last year of the 2nd Palin administration, or the next Governors' first term, what could we have accomplished?

1. All State General Fund Operating and Capital budgets are fully and truly forward funded.
2. The @\$5 Billion C.B.R. debt has been paid in full.
3. There is a substantial savings account for lean times.
4. Most, if not all, of the Pers/Ters debt is paid.
5. Every qualified Alaskan gets a substantial resource revenue share payment, truly a "Fair Share".
6. We have the option to eliminate any of the "other taxes" we choose.

LAZY MOUNTAIN JIM,


James Garhart

P.O. BOX 872533 Wasilla, Ak. 99687

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

SARAH PALIN, GOVERNOR

P.O. BOX 110020
JUNEAU, ALASKA 99811-0020
TELEPHONE: (907) 465-4660
FAX: (907) 465-3008

January 31, 2008

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FEB - 5 2008

The Honorable Bert Stedman
Alaska State Senator
State Capitol, Room 516
Juneau, AK 99801-1182

Dear Senator Stedman:

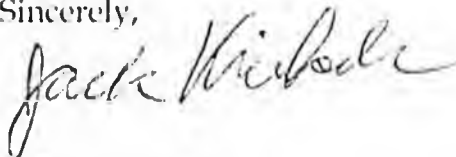
At the January 23, 2008, hearing on HB 125, you requested that I provide a written explanation of the lower position cost included in our OMB fiscal note, relative to last session's fiscal note.

As I explained at the hearing, the primary reason that the position cost was reduced from \$102.6 thousand in last session's fiscal note, to \$89.3 thousand in our updated fiscal note, is that all state agencies now pay a PERS employer rate of 22 percent, as enacted by the Legislature last session. This lower PERS rate results in a lower position cost.

As I also mentioned at the hearing, for the State of Alaska, the difference in cost between the 22 percent PERS employer rate and the full actuarial rate is included in the direct deposit to PERS on behalf of all PERS employers - \$246 million for FY 09. The direct deposit amount is an estimate based on the June 30, 2006, actuarial valuation for PERS and a number of assumptions regarding payroll growth, health care costs, and other factors. At this time, the \$246 million direct deposit to PERS is the amount projected to be necessary to retain the 22 percent employer rate for PERS employers.

If you or your staff have questions or would like to discuss this further, please give me a call at 465-4676.

Sincerely,



Jack Kreinheder
Senior Analyst

Effect of Proposed Changes to CSHB 125(FIN)

1. The first change occurs at Page 1, Line 8, where the term of the proposed fiscal plan is extended from 10 years to 15 years.

The legislature and administration have considered, and are continuing to consider, changes to taxes, a gas pipeline, and a number of other statutes and issues which will affect Alaskans for the next 50 years or more. It is reasonable for us to consider how our actions will impact the state budget for at least half that time, or 25 years. Last year the Senate State Affairs Committee considered a similar bill, SB 25, and reduced the time frame from 25 to 15 years. This bill, as currently written, would reduce the time frame even further, to just 10 years.

While we acknowledge that no one can accurately predict what will happen in 25 years, we can estimate trends based on certain assumptions. That's how we make decisions about the effect of our changes to the PPT and whether we should take on construction of a natural gas pipeline. These decisions should not be made on a stand alone basis, but in light of all aspects of the state budget.

2. The change to AS 37.07.060(a) does three primary things: First, it puts in list form the items currently found in paragraph style, making the elements of the governor's recommendations easier to read; Second, adds clarifying modifiers to existing requirements; and Third, adds to the list of requirements.
 - A. Page 1, Lines 11 and 12: Add the modifier "desired" such that results is change to read "desired results" to be consistent with language on line 14 and 16 and with language currently found in AS 37.07.014 which addresses the legislature's requirements relative to Missions and Measures.
 - B. Page 1, Lines 15 through 17: Current language requires an assessment of whether prior year missions and desired results are achieved. The amendment changes the requirement from being a closed-end "yes" or "no" requirement to more of an open-ended assessment.
 - C. Page 2, Lines 1 through 7: Sets out the requirement for projecting revenues and expenditures for the next 15 years, as well as the assumptions upon which such projections are made. The ability to evaluate the reasonableness of the projections hinges on the reasonableness of the assumptions. More important than the accuracy of the projections is the reasonableness of the assumptions. The legislature then has the responsibility of evaluating the assumptions.
 - D. Page 2, Lines 8 through 11: Currently the governor is only required to balance the budget. This added requirement would require the governor to tell the legislature how he or she intends to do so.

- E. Page 2, Lines 12 through 18: Requires the governor to let the legislature know the assumptions with regard to future status of state debt, unfunded liabilities, and federal funding. Again, the projections are not as important as the reasonableness of the assumptions.
 - F. Page 2, Lines 19 through 25: Requires the governor to let the legislature know the assumptions regarding budget reserve fund(s) and plans for handling projected revenue surpluses.
 - G. Page 2, Lines 26 and 27: Requires the governor to specify actions and timing required of the legislature for the governor's plan to work.
3. AS 37.07.060(b) currently requires the governor to provide the plan at the same time as the presentation to the legislature. The change on page 2, line 15 would require the written explanatory report to precede the message. Ideally, the report would be provided sufficiently in advance for the legislature to conduct some analysis of the report prior to the presentation.

HB

133

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 27, 2007

FURTHER REFERRALS:

Date of Committee Action: 4/17/07

The FINANCE Committee considered:

HB 133

HOUSE BILL NO. 133

ELECTRONIC MONITORING OF GANG PROBATIONER

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

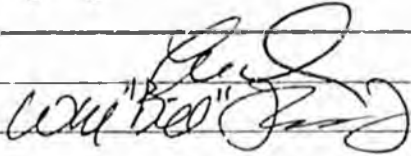
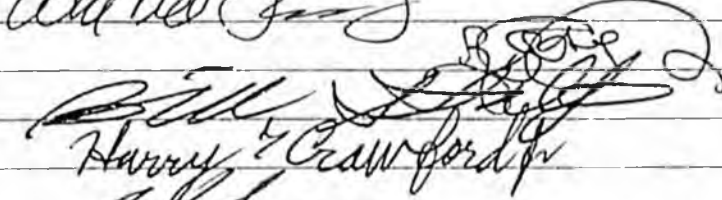
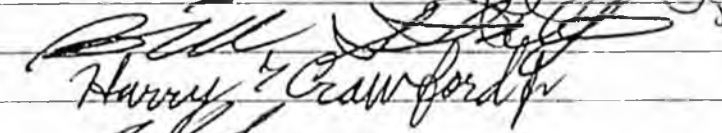
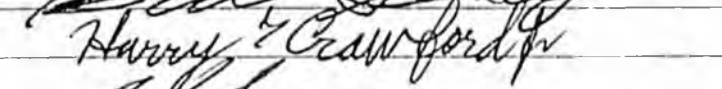
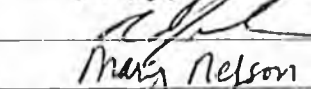
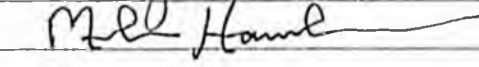
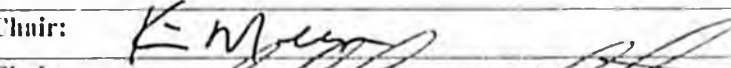

Recommends it be replaced with HCS or CS for HB 133 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR Same Title New Title

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

<u>PREVIOUS</u> FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	#1			✓
ADM	#2		✓	
LOR	#3		✓	
CRT	#4		✓	

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gara Thomas	✓			
	FOSTER	x			
	STOLTZ			x	
	CRAWFORD	✓			
	Joule NELSON			x	
	Hawker			*	
Chair: 	Meyer			✓	
Chair: 	Chevaul			✓	

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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)

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

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

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)
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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
1005 GF/Program Receipts
1037 GF/Mental Health
Other (Receipt Supported Services 1156)
TOTAL

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE #3

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSHB 133(JUD)

ANALYSIS CONTINUATION

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

Please see below for costs the department has identified.

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

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

*adopted
4-13-07*

25-LS0465W
Luckhaupt
4/13/07

CS FOR HOUSE BILL NO. 133()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

*R.O.
4-13-07*

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

FISCAL NOTE

This copy original

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	22.5	51.7	81.0	110.3	139.6	168.9
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 00

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT: HOUSE BILL 133

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

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

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

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

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

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

ALASKA STATE LEGISLATURE

While in Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4968
Fax: (907) 465-2040



While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0117
Fax: (907) 269-0119

REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: April 16, 2007

To: Representative Mike Hawker
House Finance Committee

From: Representative Bob Buch
Alaska State Legislature

Re: HB 133

Dear Representative Hawker:

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

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

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

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

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

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

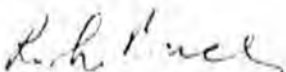
Third, there were serious fiscal problems with expanding the bill. If you require a bracelet for every violent crime, you are looking at a fiscal note that goes into the millions of dollars.

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

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

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

Sincerely,


Representative Bob Buch
Alaska State Legislature
House District 27

Cc: Members of the House Finance Committee

ALASKA STATE LEGISLATURE

While in Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4968
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While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
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Fax: (907) 269-0119

REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

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

From: Representative Bob Buch

Re: CS for HB 133

Date: April 12, 2007

Dear Representative Meyer:

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

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

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

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

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "B. L. Buch".

Representative Bob Buch

25-LS0465V
Luckhaupt
4/12/07

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

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

1
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12

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

(g) In addition to other conditions of parole imposed under this section for a prisoner serving a sentence for an offense where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or admitted or the penalty for the offense was aggravated under AS 12.55.137, the board shall impose as a condition of special medical, discretionary, and mandatory parole a requirement that the prisoner submit to electronic monitoring. Electronic monitoring under this subsection must provide for monitoring of the prisoner's location and movements by Global Positioning System technology. The board shall require a prisoner serving a period of probation with electronic monitoring as provided under this section 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.

LEGAL SERVICES

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

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

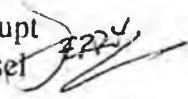
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 14, 2007

SUBJECT: HB 133 - Sectional Summary

TO: Representative Bob Buch

FROM: Gerald P. Luckhaupt
Legislative Counsel 

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

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

GPL:med
07-100.med

LEGAL SERVICES

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

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

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

MEMORANDUM

March 2, 2007

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

TO: Representative Bob Buch

FROM: Gerald P. Luckhaupt *ERL*
Legislative Counsel

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

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

Our general approach is as follows:

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

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

Representative Bob Buch

March 2, 2007

Page 2

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

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

GPL:med
07-141.med

Enclosure

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF JUVENILE JUSTICE

Sarah Palin, GOVERNOR

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February 26, 2007

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

Dear Representative Ramras:

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

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

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

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

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

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

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

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

Sincerely,

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

Tony Newman
Social Services Program Officer



Municipality of Anchorage



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Mayor Mark Begich

Anchorage Police Department

February 12, 2007

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

Re: APD Support for Electronic Ankle Monitors

Dear Representative Buch:

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

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Rob Heun".

Rob Heun
Chief of Police

Community, Security, Prosperity

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

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

Dear John:

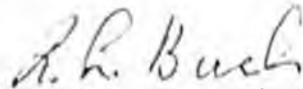
This is to follow up on your question about the language in HB 133 (electronic monitoring of gang probationers). In particular you had a question about the opening phrase "While on probation and as a special condition of probation ...etc."

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

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

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

Thanks very much for your support. I appreciate it.


Representative Bob Buch
Alaska State Legislature
House District 27

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: March 14, 2007

To: Representative Nancy Dahlstrom

From: Representative Bob Buch

Re: Proposed Legislation (HB 133)

Dear Nancy:

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

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

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

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

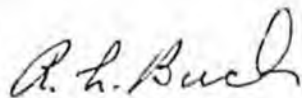
I originally proposed that we undertake it as a three year pilot project; however, both the Dept. of Law and the Dept. of Corrections thought that three years would not be enough time to assess the program because of the lag time it will take to get it going in the court system. Once the program becomes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

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

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

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

Thanks very much for your support. I appreciate it.



Representative Bob Buch
Alaska State Legislature
House District 27

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Anchorage Daily News

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

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

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

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

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

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

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

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

-- Anchorage Daily News

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Alaska State Legislature
Juneau, AK 99801

RE: Senate Bill 89

March 2, 2007

Dear Members:

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

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

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

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

Sincerely,

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

Daniel P. Hoffman, Chief
Fairbanks Police Department

2007 STATE LEGISLATIVE PROGRAM
MUNICIPAL PRIORITY ISSUES

Legislation

Public Safety

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

PRIORITY: 2

ISSUE/PROJECT DESCRIPTION:

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

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

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

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

Legislative District (s):

House: 99

Senate: A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

I. GENERAL CONSIDERATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AS 12.55(c)(29) →

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

regulation enhancing punishment for subsequent conviction. 97 ALR5th 293.

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

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

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

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

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

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

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AK ST § 11.81.900

Page 2

AS 11.81.900

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

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NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

(2) "affirmative defense" means that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) AS 11.41;

(ii) AS 11.46; or

(iii) a felony offense;

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

(15) "dangerous instrument" means

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

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

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



22 AAC 05.620. Prisoner responsibilities for electronic monitoring services

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

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

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

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

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

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

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

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

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

Authority: AS 33.30.065

22 AAC 05.660. Definitions

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

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

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Anchorage Daily News

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Teen gunfire signals return of gang rivalry

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

By MEGAN HOLLAND
Anchorage Daily News

(Published: April 17, 2007)

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

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

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

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

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

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

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

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

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

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

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

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

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

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HB

133

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
 MAY 09 2007
 SENATE FINANCE COMMITTEE

DATE: 5/1/07

FURTHER:

 DATE TURNED IN TO OFFICE: 9 May 2007

Finance Committee considered CS FOR HOUSE BILL NO. 133(FIN)

HB 133 ELECTRONIC MONITORING OF GANG PROBATIONER

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

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- 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 # _____

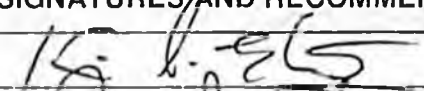

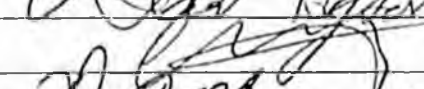

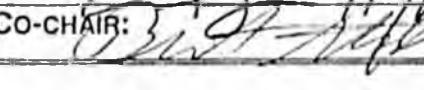
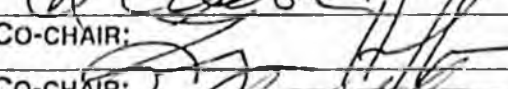
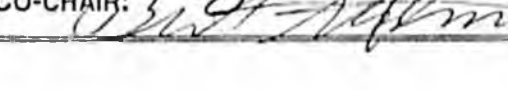
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	2/16/07			✓	#1
Admin	3/26/07		*		#2
Corrections	3/13/07		*		#3
Courts	2/22/07		*		#4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Elton	✓			
	Thomas	✓			
	Dyson	✓			
	Huggins	✓			
	Olson	✓			
CO-CHAIR: 	Hoffman	✓			
CO-CHAIR: 	Stedman	✓			

FISCAL NOTE

REPORTED OUT
 MAY 09 2007
 SENATE FINANCE COMMITTEE

STATE OF ALASKA
 2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
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

Position Type	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The bill would require electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director Phone: 465-5427
 Division: Administrative Services Division Date/Time: 2/16/07 9:27 AM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date: 2/16/2007
 Agency: Department of Law

FISCAL NOTE

REPORTED OUT
MAY 09 2007
SENATE FINANCE COMMITTEE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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: 00
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: Joshua P. Fink Phone: 907-269-3501
Division: Office of Public Advocacy Date/Time: 3/26/07 9:00AM
Approved by: Rachael Petro, Deputy Commissioner Date: 3/20/07 9:30AM
Agency: Administration

COMMITTEE COPY

FISCAL NOTE

REPORTED OUT
MAY 09 2007
SENATE FINANCE COMMITTEE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES
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CHANGE IN REVENUES (1156)
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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 (Receipt Supported Services 1156)	.	.	.	.	.	.
TOTAL	.	.	.	.	.	.

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE #3

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSHB 133(JUD)

ANALYSIS CONTINUATION

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

Please see below for costs the department has identified.

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

FISCAL NOTE

REPORTED OUT
MAY 09 2007
SENATE FINANCE COMMITTEE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type -Do not abbreviate)						
TOTAL

Estimate of any current year (FY2007) cost: 00

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

Phone: 463-4750
Date/Time: 2/22/07 2:30 PM
Date: 2/22/2007

ALASKA STATE LEGISLATURE

While in Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4968
Fax: (907) 465-2040



While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0117
Fax: (907) 269-0119

REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Differences between HB 133 and SB 89.

HB 133 is more narrowly focused than SB 89. Here are the key differences:

- SB 89 applies to offenders convicted of both misdemeanors and felonies
- HB 133 applies only to offenders convicted of felonies
- Because of this difference, HB 133 has a substantially lower fiscal note

- SB 89 allows offenders to replace prison time with electronic monitoring
- HB 133 does not allow offenders to replace prison time with electronic monitoring

- HB 133 has a sunset provision
- SB 89 has no sunset provision

Other items of note:

HB 133 gives the Dept of Corrections the receipt authority to collect funds from the offender to pay for the cost of electronic monitoring.

HB 133 is supported by the Dept. of Corrections and the Dept. of Law.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT: HOUSE BILL 133

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

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

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

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

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

Office of Representative Bob Buch
House District 27

State Capitol, Room 430 / Juneau, Alaska 99801
907.465.4968 Office / 907.465.2010 Fax

ALASKA STATE LEGISLATURE

While in Session
State Capitol
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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Sectional Analysis CS HB 133 (FIN)

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

Section 1:

Amends AS 12.55.100 by adding a new section (f) that requires electronic monitoring (with GPS location and tracking ability) as a condition of probation, for people who have been convicted of proven gang-related offenses. The costs for the monitoring shall be paid by the offender, unless they are determined to be indigent. The offender who is put on electronic monitoring is not entitled to credit for time served in a correctional facility.

Section 2:

Amends AS 33.16.150 by adding a new subsection (g) that requires electronic monitoring (with GPS location and tracking ability) as a condition of parole, for people who have been convicted of proven gang-related offenses. The costs for the monitoring shall be paid by the offender, unless they are determined to be indigent. The offender who is put on electronic monitoring is not entitled to credit for time served in a correctional facility.

Section 3:

Repeals the electronic monitoring program established in this bill on December 31, 2012.



Municipality of Anchorage

4501 Bragow Street • Anchorage, Alaska 99507-1599 • Telephone (907) 780-6500 • <http://www.muni.org>



Mayor Mark Begich

Anchorage Police Department

February 12, 2007

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

Re: APD Support for Electronic Ankle Monitors

Dear Representative Buch:

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

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

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

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

Sincerely,

Rob Heun
Chief of Police

Community, Security, Prosperity



FAIRBANKS POLICE DEPARTMENT

911 Cushman Street
Fairbanks, AK 99701-4616
Phone: (907) 450-6500
Fax: (907) 452-1588
Email: fpd@ci.fairbanks.ak.us



Alaska State Legislature
Juneau, AK 99801

RE: Senate Bill 89

March 2, 2007

Dear Members:

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

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

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

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

Sincerely,

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

Daniel P. Hoffman, Chief
Fairbanks Police Department

HB

136

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB136-COM-OL-03-24-07

Bill Version: HB 136

() Publish Date: _____

Revision Date/Time (Note if correction): 3/24/2007

Dept. Affected: Commerce

Title: Dental Hygienists

RDU: Occupational Licensing (117)

Component: Occupational Licensing

Sponsor: Stoltz

Requester: House Finance

Component No.: 2360

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						
1156-Receipt Supported Services	.	.	.	.	.	.
TOTAL	.	.	.	.	.	.

Estimate of any current year (FY2007) cost: 00

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation amends AS 08.32 relating to Dental Hygienists to provide for a restorative function license endorsement, to amend supervision requirements, and to provide for collaborative agreements for certain dental hygienists to provide certain services.

Typically license endorsement fees are \$50 and do not include the costs of additional accredited programs requested or approved by the Alaska State Dental Board. There are over 500 licensed Dental Hygienist in the State. At this time the Division of Corporations, Business, and Professional Licensing does not know how many licensees will request a restorative function endorsement and therefore, is unable to estimate costs and revenue.

All Occupational Licensing programs are required to cover costs with licensing fees under AS 08.01.065. Licensees requesting the endorsement will cover the additional fees.

Prepared by: Chris Wyatt, Administrative Manager
Division: Corporations, Business, and Professional Licensing

Phone: (907) 465-2572
Date/Time: 3/24/07 2:57 PM

Approved by: Emil Notti, Commissioner
Agency: Commerce, Community, and Economic Development

Date: 3/24/2007

*adopted
3/27/07*

25-LS0364/K
Bullard
3/26/07

CS FOR HOUSE BILL NO. 136()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES STOLTZE, Gardner

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to dental hygienists."

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

3 * Section 1. AS 08.32 is amended by adding a new section to read:

4 **Sec. 08.32.085. Restorative function license endorsement.** (a) The board
5 shall issue a restorative function endorsement to a dental hygienist who is licensed
6 under this chapter if the licensee furnishes evidence satisfactory to the board that the
7 licensee has

8 (1) successfully completed a program accredited by the Commission
9 on Dental Accreditation of the American Dental Association or other course of
10 instruction approved by the board; and

11 (2) passed the Western Regional Examining Board's restorative
12 examination or other equivalent examination approved by the board within the five
13 years preceding the licensee's endorsement application, or the licensee is licensed in
14 another state or United States territory to perform restorative functions.

15 (b) An endorsement issued under this section authorizes a licensed dental

1 hygienist under the direct supervision of a licensed dentist to place restorations into a
2 cavity prepared by the licensed dentist and thereafter carve, contour, and adjust
3 contacts and occlusion of the restoration.

4 (c) The board may by regulation establish renewal and continuing education
5 requirements for an endorsement under this section.

6 * Sec. 2. AS 08.32.110(a) is amended to read:

7 (a) The role of the dental hygienist is to assist members of the dental
8 profession in providing oral health care to the public. A person licensed to practice the
9 profession of dental hygiene in the state may

10 (1) remove calcareous deposits, accretions, and stains from the
11 exposed surfaces of the teeth beginning at the epithelial attachment by scaling and
12 polishing techniques;

13 (2) apply topical preventive agents;

14 (3) apply pit and fissure sealants;

15 (4) perform root planning and periodontal soft tissue curettage;

16 (5) perform other dental operations and services delegated by a
17 licensed dentist if the dental operations and services are not prohibited by (c) of this
18 section; and

19 (6) if certified by the board and under the direct, [OR] indirect, or
20 general supervision of a licensed dentist, administer local anesthetic agents.

21 * Sec. 3. AS 08.32.110 is amended by adding a new subsection to read:

22 (e) This section does not prohibit a dental hygienist

23 (1) with an endorsement issued under AS 08.32.085 from performing
24 the activities authorized under AS 08.32.085; or

25 (2) who has entered into a collaborative agreement approved by the
26 board under AS 08.32.115 from performing the activities authorized under the
27 collaborative agreement.

28 Sec. 4. AS 08.32 is amended by adding a new section to read:

29 **Sec. 08.32.115. Collaborative agreements.** (a) If the collaborative agreement
30 is approved by the board under (d) of this section, a dental hygienist with a minimum
31 of 4,000 documented hours of clinical experience within the five years preceding

1 application for the board's approval may enter into a collaborative agreement with a
2 dentist licensed under AS 08.36 in which the licensed dentist authorizes the dental
3 hygienist to perform one or more of the following:

- 4 (1) oral health promotion and disease prevention education;
- 5 (2) removal of calcareous deposits, accretions, and stains from the
6 surfaces of teeth;
- 7 (3) application of topical preventive or prophylactic agents, including
8 fluoride varnishes and pit and fissure sealants;
- 9 (4) polishing and smoothing restorations;
- 10 (5) removal of marginal overhangs;
- 11 (6) preliminary charting and triage;
- 12 (7) radiographs;
- 13 (8) use of local periodontal therapeutic agents; and
- 14 (9) performance of nonsurgical periodontal therapy, with or without
15 the administration of local anesthesia, subsequent to a licensed dentist's authorization
16 or diagnosis as specified in the licensed hygienist's collaborative agreement.

17 (b) The services described in (a) of this section may be performed under a
18 collaborative agreement approved by the board

- 19 (1) without the presence of the licensed dentist;
- 20 (2) in a setting other than the usual place of practice of the licensed
21 dentist; and
- 22 (3) without the dentist's diagnosis and treatment plan unless otherwise
23 specified in the collaborative agreement or in (a) of this section.

24 (c) The board shall adopt regulations regarding approval of collaborative
25 agreements between licensed dental hygienists and licensed dentists.

26 (d) The board may approve a collaborative agreement between a licensed
27 dentist and a dental hygienist. However, the board may not approve more than five
28 collaborative agreements with a licensed dentist, not including any collaborative
29 agreements that have been terminated. A dental hygienist shall notify the board of the
30 termination of a collaborative agreement with a licensed dentist.

31 * Sec. 5. AS 08.32.140 is amended to read:

1
2
3
4
5

Sec. 08.32.140. Supervision required. A dental hygienist, other than a dental hygienist practicing according to a collaborative agreement approved under AS 08.32.115, may not practice except under the general supervision of a licensed dentist or, if required by regulations adopted under AS 08.32.110(b), the direct or indirect supervision of a licensed dentist.

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for:
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

BILL STOLTZE

State Representative

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 136

Dental Hygienists

"An Act relating to dental hygienists."

Good oral health is essential to improving overall health and well being. However, many factors exacerbate the oral health disparity across Alaska's population, including the current structure of the oral healthcare delivery system, geographic and educational barriers, and the cost of care.

Dental Hygienists are licensed oral care health professionals who focus on preventing and treating oral diseases. They have graduated from nationally accredited dental hygiene education programs in colleges and universities, and have successfully passed a national written and state clinical examination. Given their comprehensive education and clinical preparation, dental hygienists are well prepared to deliver preventative oral health care services to the public, safely and effectively.

The provisions of House Bill 136 follow the expanded functions of dental hygienists in other states to improve access to preventative oral health care. Specifically, HB 136:

1. Allows a licensed dental hygienist to place "fillings" into a cavity prepared by a licensed dentist.
2. Authorizes a licensed dental hygienist to administer local anesthetic agents under the general supervision of a licensed dentist.
3. Permits a licensed dental hygienist to enter into a collaborative agreement with a licensed dentist in which the dentist authorizes the dental hygienist to perform certain duties stipulated under HB 136 without the supervision of the dentist.

I ask for your consideration and support of HB 136 to help improve access to oral health care in Alaska.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIE RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK



March 27, 2007

The Honorable Mike Chenault, Co-Chair
House Finance Committee
Alaska State Capitol, Room 505
Juneau, AK 99801-1182

The Honorable Kevin Meyer, Co-Chair
House Finance Committee
Alaska State Capitol, Room 515
Juneau, AK 99801-1182

HB 136 (Stoltze)—Support

Dear Co-Chairs Chenault and Meyer:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Finance Committee to support HB 136, authored by your Committee Vice-Chair Bill Stoltze.

As you and your Committee colleagues know, Alaska has a shortage of all health professionals, particularly in our remote communities. We will never be able to find a sufficient number of physicians but we use physician assistants and nurse practitioners very effectively. We will never have enough dentists and Alaska uses dental hygienists effectively. We could use them even more effectively and HB 136 would help us accomplish this.

Dental hygienists are not independent practitioners. They work under licensed dentists and focus on preventing and treating oral diseases. HB 136 does not break new ground for their scope of practice. Other states already allow dental hygienists to:

- Place fillings into a cavity already prepared by a dentist
- Administer a local anesthetic under the general supervision of a dentist
- Enter into an agreement with a dentist in which the dentist authorizes the hygienist to work on specified tasks

We recognize that any change in a scope of practice may make other professionals concerned. We want to make certain that all Alaskans have access to high quality, affordable health care, including oral health.

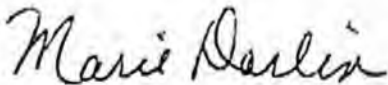
Many oral health problems can be prevented or treated by professional dental hygienists and this care may turn out to be less expensive and more accessible. Our dental costs are high. Dental procedures in Alaska cost 37.7% more than in the rest of the United States. We believe HB 136 will help reduce those costs as well as improve accessibility. Since all of these issues are under the supervision of a dentist or by agreement with a dentist, we also do not believe quality will suffer. Indeed, it may very well improve significantly since hygienists will serve as a "force multiplier" for the dentists we do have.

AARP recommends an "AYE" vote on HB 136.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Bill Stoltze
Representative Richard Foster
Representative Mike Hawker
Representative Bill Thomas
Representative Harry Crawford
Representative Les Gara
Representative Reggie Joulé
Representative Mike Kelly
Representative Mary Nelson



Alaska Dental Society, Inc.

9170 Jewel Lake Road, Suite 203
Anchorage, Alaska 99502-5390
(907) 563-3003 • FAX: 563-3009
akdental@alaska.net

27 March 2007

Rep. Chenault & Rep. Meyer, Co-Chairmen
And Members, House Finance Committee
State Capitol
Juneau, AK 99801

Gentlemen & Committee Members:

Educating rural Alaskans about proper oral hygiene and diet, combined with access to dental care in underserved areas is one of the greatest challenges facing dentistry in the twenty first century and is even more crucial in Alaska. The Alaska Dental Society is committed to finding solutions to this complex problem. Increased use of dental auxiliaries, including broadening the scope of duties of all dental auxiliaries will be an important part of the solution. The Alaska Dental Society has worked for the past two legislative sessions promoting bills that broaden the scope of duties for dental auxiliaries.

The fast pace of committee hearings this session has created difficulty in allowing for discussions between the Alaska State Dental Hygiene Association and our society. However, it is our understanding that the leadership of the Hygiene Association is agreeable to making amendments to this bill which protect the public.

The ADS would support an amendment offering the attached language, which provides the necessary public protection. We ask for your assistance in amending this bill to reflect what has been mutually agreed upon.

Respectfully yours,

James R. Towle
Executive Director

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for;
Department of Public Safety
Department of Law



Session:
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BILL STOLTZE
STATE REPRESENTATIVE
Representative_Bill_Stoltze@legis.state.ak.us

House Bill 136 (Version M) Sectional Analysis

Section 1 authorizes the Board of Dental Examiners to issue a restorative function endorsement to a licensed dental hygienist if the hygienist has successfully completed an accredited program and has passed the required restorative function examination(s).

A restorative function endorsement will allow a licensed dental hygienist to place restorations, i.e. fillings, into a cavity prepared by a licensed dentist and thereafter carve, contour and adjust contacts and occlusion of the restoration under the direct supervision of a licensed dentist.

Section 2 authorizes a licensed dental hygienist to administer local anesthetic agents under the general supervision of a licensed dentist.

Local anesthesia renders a small part of the body, such as a tooth, insensitive to pain without affecting consciousness. Licensed dental hygienists in the state who are certified by the Board have been administering local anesthesia under "direct" or "indirect" supervision of a licensed dentist since 1981. Adding "general" supervision would allow a licensed, Board-certified dental hygienist to administer local anesthetic agents without the requirement for a licensed dentist being present in the dental facility.

Section 3 includes under dental hygienists' scope of practice the ability to place restorations (section 1) and perform the activities authorized under a collaborative agreement with a licensed dentist (section 4).

Section 4 authorizes the Board to approve a collaborative agreement between a licensed dentist and a licensed dental hygienist and specifies services and procedures allowed under a collaborative agreement.

Working under a collaborative agreement with a licensed dentist, a dental hygienist would be able to initiate treatment within their scope of practice based on his or her assessment of a patient's needs without the specific authorization of a dentist.

Section 5 applies supervision requirements to a dental hygienist operating in conjunction with a licensed dentist under a collaborative agreement.

DISTRICT 16

BRUSHWOOD • BUTTE • CHULGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

House Bill 136 – “An act relating to dental hygienists”

ie Problem

- Preventable oral diseases can cause life threatening emergencies.
- Many Alaskans cannot afford oral healthcare.
- There are geographic and educational barriers preventing access to oral health care.
- The structure of Alaska’s current oral healthcare delivery system contains barriers that prevent access to oral health care.

Dental Hygienists Can Help

Dental hygienists are well-prepared to deliver preventative oral health care services to the public safely and effectively.

- Dental hygienists focus on preventing and treating oral diseases.
- Dental hygienists graduate from nationally accredited dental hygiene education programs in universities, and must pass a national written and state clinical examination in order to practice. Dental hygienists are state-licensed oral healthcare professionals.
- Dental hygienists are key to cost-effective early intervention and education.

Provisions under HB 136

1. Anesthesia under *general* supervision

Allows a licensed dental hygienist to perform local anesthesia under general supervision. A licensed dentist would still be required to diagnose the condition to be treated prior to the hygienist performing treatment.

2. Expanded restorative function

Allows a licensed dental hygienist to place “fillings” into a cavity prepared by a licensed dentist.

3. Collaborative agreement

Allows a licensed dental hygienist to enter into a written agreement with a licensed dentist who would authorize the services to be performed by the dental hygienist without the supervision of the dentist.

HB 136 – “An act relating to Dental Hygienists”

Fact Sheet: Local Anesthesia

<p>What is Local Anesthesia?</p>	<ul style="list-style-type: none"> Local Anesthesia renders a small part of the body, such as a tooth, insensitive to pain without affecting consciousness. It reduces stress and allows a client to be comfortable while being treated by a hygienist for moderate to advanced gum disease.
<p>Statute Change</p>	<ul style="list-style-type: none"> AS 08.32.110(a) is amended to read: ... (6) if certified by the board and under the direct, [OR] indirect, <u>or general</u> supervision of a licensed dentist, administer local anesthetic agents.
<p>Definitions</p>	<ul style="list-style-type: none"> “Direct supervision” means the dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and before dismissal of the patient evaluates the performance of the dental hygienist. “Indirect supervision” means a licensed dentist is in the dental facility, authorizes the procedures, and remains in the dental facility while the procedures are being performed by the dental hygienist “General supervision” means the dentist has authorized the procedures and they are being carried out in accordance with the dentist's diagnosis and treatment plan.
<p>Dental Hygienists Can Help</p>	<ul style="list-style-type: none"> Education – The dental hygiene curriculum is established and competency requirements are enforced by the American Dental Association. Numerous hours of didactic and clinical experience, as well as written and clinical testing are required before a dental hygienist is licensed to administer local anesthetic agents. Additionally, in Alaska, a separate written and clinical exam administered by WREB, a National Dental and Dental Hygiene testing agency, is required prior to obtaining a license for administering local anesthesia. 25 years of experience – Dental hygienists in Alaska have been delivering local anesthesia under direct or indirect supervision since July 20, 1981. Record of safety – An Alaskan dental hygienist has <u>never</u> had disciplinary action taken against his/her license due to the administration of local anesthesia under the current statutes. Liability insurance – A dental hygienist's liability insurance cost is the same whether they have a license to deliver local anesthesia or not. Therefore, it can be assumed that insurance companies do not see local anesthesia as an increased risk. Emergency training – Dental hygienists are required to maintain current CPR certification and are capable of responding appropriately in emergency situations. Dentist discretion – The administration of local anesthesia under general supervision remains at the discretion of the supervising dentist (i.e. a dentist's authorization would still be required) Other states – The states of <i>Idaho</i> and <i>Oregon</i> allow local anesthesia under General Supervision. There have been no disciplinary cases against a dental hygienist as related to the administration of local anesthesia.

Number of Dentists and Dental Hygienists by Region

Region	Population	No. of Dentists	No. of Hygienists	No. of Hyg/Den	No. of Hyg/10,000
New England			13,118	1.4	9.4
Middle Atlantic			25,976	0.9	6.6
East North Central			31,851	1.3	7.1
West North Central			9,481	1	4.9
South Atlantic			27,484	1.1	5.3
East South Central			7,998	1.1	4.7
West South Central			12,297	0.9	3.9
Mountain			10,422	1.2	5.7
Pacific			31,149	1.1	6.9
U.S. Total			169,149	1.1	6.0
Alaska	663,661	497	498	1.0	7.47
Anchorage Mat-Su Region	352,282	228	270	1.2	7.66
Anchorage Municipality	278,241	197	216	1.1	7.76
Matanuska-Susitna Borough	74,041	29	54	1.9	7.29
Gulf Coast Region	74,904	37	42	1.1	5.61
Kenai Peninsula Borough	51,224	27	29	1.1	5.66
Kodiak Island Borough	13,638	7	9	1.3	6.60
Valdez-Cordova Census Area	10,042	3	4	1.3	3.98
Interior Region	102,005	50	45	0.9	4.41
Denali Borough	1,823	0	0	-	-
Fairbanks North Star Borough	87,650	47	45	1.0	5.13
Southeast Fairbanks Census Area	6,471	3	0	-	-
Yukon Koyukuk Census Area	6,061	0	0	-	-
Northern Region	23,669	8	2	0.3	0.84
Nome Census Area	9,452	5	1	0.2	1.06
North Slope Borough	6,894	2	1	0.5	1.45
Northwest Arctic Borough	7,323	1	0	-	-
Southeast Region	70,822	41	48	1.2	6.78
Haines Borough	2,207	1	2	2.0	9.06
Juneau City and Borough	31,193	22	26	1.2	8.34
Ketchikan Gateway Borough	13,125	7	9	1.3	6.86
Prince of Wales-Outer Ketchikan C.A.	5,497	1	2	2.0	3.64
Sitka City and Borough	8,947	6	5	0.8	5.59
Skagway-Hoonah-Angoon C.A.	3,062	0	0	-	-
Wrangell-Petersburg Census Area	6,172	4	4	1.0	6.48
Yakutat City and Borough	619	0	0	-	-
Southwest Region	39,979	13	5	0.4	1.25
Aleutians East Borough	2,659	0	0	-	-
Aleutians West Census Area	5,249	2	1	0.5	1.91
Bethel Census Area	17,085	0	0	0.2	1.17
Bristol Bay Borough	1,073	0	0	-	-
Dillingham Census Area	4,792	0	0	-	-
Lake and Peninsula Borough	1,620	0	0	-	-
Wade Hampton Census Area	7,501	0	0	-	-
Out-of State		122	84		

Source: National data calculated using ICR, 2000 and U.S. Census Bureau

Source: State population data from ADOL&WD, 2005

Source: Dentist/Hygienist data from AK Div of Occupational Licensing, Jan 2007



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sarah Palin, Governor
Emil Notti, Commissioner
Rick Urion, Director

Division of Corporations, Business and Professional Licensing

March 6, 2007

The Honorable Peggy Wilson, Chair
Health, Education and Social Services Committee
House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Wilson:

RE: HB 136

The Board of Dental Examiners is in support of HB 136, "An Act relating to dental hygienists".

This legislation will be beneficial in providing more dental services to the citizens of the State of Alaska.

Please contact me at (907) 561-6262 or by email at geracedds@gei.net if you have questions regarding our support of this bill.

Sincerely,

A handwritten signature in cursive that reads "William Gerace". To the right of the signature is a circular stamp containing the initials "W.G.". The signature is written in black ink on a white background.

William Gerace, DDS, Acting-Chair
Alaska Board of Dental Examiners