

Submitted by: ASSEMBLY MEMBER COFFEY
Prepared by: Assembly Counsel
For reading: August 15, 2006

CLERK'S OFFICE
APPROVED
Date: 8-15-06

ANCHORAGE, ALASKA
AR NO. 2006-214

1 A RESOLUTION OF APPRECIATION BY THE ANCHORAGE MUNICIPAL
2 ASSEMBLY TO THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE
3 STATE OF ALASKA FOR WORKING TOGETHER IN SPECIAL SESSION TO
4 ENACT STATUTORY PROVISIONS TO ASSIST LAW ENFORCEMENT IN
5 THE IDENTIFICATION OF WITNESSES TO VIOLENT CRIMES AND FELONY
6 PROPERTY CRIMES.
7

8
9 WHEREAS, recent gang-related shootings in Anchorage demonstrate that
10 violent and criminal gang-related activity is present and on the rise in our
11 community; and
12

13 WHEREAS, criminal gang members, acquaintances, and family members
14 may embrace and share a *code of silence* that prevents witnesses or persons
15 with relevant information from cooperating with law enforcement; and
16

17 WHEREAS, witnesses to criminal activity, including witnesses to gang-
18 related crimes, often leave the scene of the crime without identifying themselves,
19 or others known to them to have witnessed or participated in the criminal activity;
20 and
21

22 WHEREAS, once witnesses leave the scene of the crime, it is often difficult
23 or impossible for police to identify and locate the witnesses who heard and saw
24 the criminal activity and could assist law enforcement in the investigation; and
25

26 WHEREAS, by proclamation on July 25, 2006, the Honorable Governor
27 Murkowski supplemented the subject matter of the Twenty-Fourth Legislature's
28 Third Special Session with the reintroduction of bills "relating to gang-related
29 violence and to contempt of court and to temporary detention and identification of
30 persons"; and
31

32 WHEREAS, as detailed in the Governor's transmittal letter of July 27, 2006
33 and reproduced in the Senate Journal for that date, the law enforcement and
34 judicial processes authorized under SB 3005 were drafted to meet the
35 constitutional requirements of Alaska judicial decisions and to provide helpful
36 statutory standards for the police; and
37
38

1 WHEREAS, both the Alaska State Senate and the Alaska House of
2 Representatives have passed Senate Bill 3005, to enact statutory provisions to
3 assist law enforcement in the investigation of violent crimes and felony property
4 crimes, including gang-related criminal activity, by allowing peace officers to keep
5 witnesses at a serious crime scene briefly for identification, and if necessary, to
6 subpoena identification from a witness; and

7
8 WHEREAS, in law enforcement and our criminal justice system, witnesses
9 can provide the deciding factors in bringing indictments and prosecuting crimes;
10 and the proper identification of witnesses is crucial to the integrity of the judicial
11 process in both the prosecution and defense of persons charged with crime;

12
13 NOW, THEREFORE, THE ANCHORAGE ASSEMBLY RESOLVES:

14
15 1. To acknowledge and thank the Third Special Session of the
16 24th Alaska State Legislature for their hard work and consideration
17 in passing Senate Bill 3005, as amended, to enact statutory
18 provisions to provide law enforcement officers with the legal tools to
19 temporarily detain witnesses on-site when reasonably necessary for
20 identification, and to subpoena a witness to criminal activity to obtain
21 testimony crucial to proper prosecution of a crime, within existing
22 constitutional limitations and protections.

23
24 2. To acknowledge and thank the Honorable Governor
25 Murkowski for including this important public safety legislation on the
26 agenda for the Third Special Session and for his support in enacting
27 this law.

28
29 3. To affirm commitment by the Assembly to the citizens of
30 Anchorage to provide for public safety through the protection,
31 preservation and enhancement of the quality of life in our city, to
32 protect the constitutional rights of all citizens, to support intervention
33 and prevention strategies, and to give law enforcement the legal
34 framework and authority to investigate and prosecute gang-related
35 criminal acts.

36
37 PASSED AND APPROVED by the Anchorage Assembly this 15th day
38 of August, 2006.

39
40 Daniel A. Sullivan
41 Chair

42 ATTEST:

43 Baker S. Gment
44
45 Municipal Clerk



FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 27, 2006

P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to contempt of court and to temporary detention and identification of persons. The bill addresses the increase in serious gang-related incidents in Alaska.

The recent spate of gang-related shootings in Anchorage has shown that the police need clearer guidance as to their authority to investigate those crimes. Often, witnesses to the crimes will not identify themselves, not say what happened, and quickly leave the scene without assisting the police in any way. There are any number of reasons why some witnesses do not want to talk to the police. But once they leave the scene it is often difficult or impossible for the police to identify them and locate them.

The purpose of the bill is to give the police statutory authority to temporarily detain a witness of a serious crime in order to find out what the person knows, or at least to identify the witness so that the police can talk to the witness at a later time when the witness feels safe or is better able to talk to the police.

The authority of the police to temporarily detain witnesses to crimes is recognized by Alaska case law from both the Alaska Supreme Court and the Alaska Court of Appeals. See *City of Kodiak v. Samaniego*, 83 P.3d 1077 (Alaska 2004) and cases cited in that opinion. However, the full scope of that police authority is not entirely clear from the court opinions; therefore, this bill would provide helpful statutory standards for the police.

Proposed AS 12.50.201(a) closely follows the *Samaniego* opinion in allowing the police to temporarily detain a person who witnessed or was near the commission of a serious crime, if the detention is necessary to identify or protect the person, to find out what happened, or in other "exigent circumstances" that a court finds to be appropriate under the facts of a particular case. The *Samaniego* opinion does not specify what is a serious crime, however, and this bill limits police

ORIGINAL

The Honorable Ben Stevens
July 27, 2007
Page 2

opinion does not specify what is a serious crime, however, and this bill limits police authority to detain witnesses to cases involving violent crimes and felony property crimes.

The Alaska court opinions also do not specify precisely what the police officers can do to identify the person. A recent United States Supreme Court opinion upheld a state statute that made it a criminal offense for a person suspected of a non-serious crime to refuse to give the person's name to the police, and reaffirmed the state interest in allowing the police to identify suspects of crimes. But other opinions make it clear that a person suspected of a crime is not otherwise required to answer questions. See *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004) and cases cited in that opinion.

The court's discussion in *Hiibel* of the state interest in identifying suspects of non-serious crimes seems equally applicable to identifying possible witnesses of serious crimes. The difference, of course, is that in the case of a suspect the police have focused their attention on that person as the possible perpetrator, and their efforts can be said to be designed to gather evidence against that person. But in the case of a witness, the police simply want to find out what the person knows about a serious crime.

Despite not being the focus of police attention, a witness to a crime nonetheless has the right under the Fourth Amendment not to be subject to unreasonable searches and seizures, and the right under the Fifth Amendment not to be forced to incriminate himself or herself. These constitutional rights limit what the police can do with suspects of crimes, and they will also undoubtedly limit what police can do to obtain information from witnesses.

To respect these constitutional rights, the bill does not require that the witness answer any questions or even speak to the officer, and does not allow the person to be removed from the vicinity or to be unreasonably delayed. The bill does not require that the person even show identification. However, if the person elects not to produce valid government-issued photographic identification, the police are authorized to serve a subpoena for the person to testify in the grand jury, and to take the person's fingerprints if the case under investigation involves murder, attempted murder, or a "drive-by" shooting.

It is the obligation of every citizen to testify in court or a grand jury unless the person has a legal privilege not to testify. The provisions in the bill attempt to safeguard the constitutional rights of witnesses at the scene of the crime, and it is left to the court to determine whether a witness to a crime has a privilege not to testify in the grand jury or in a court proceeding. For example, the witness may

The Honorable Ben Stevens
July 27, 2007
Page 3

fear that testimony may show the witness's involvement in the planning or commission of the crime under investigation, and thus the witness would have a privilege not to incriminate himself or herself unless the witness receives immunity from prosecution. See, *e.g.*, the court procedure set out in AS 12.50.101. The grand jury subpoena brings into play a court process that allows the witness to request the court to quash the subpoena, thus allowing a court to decide whether the witness must testify. Thus, the grand jury subpoena helps fully protect the rights of a witness.

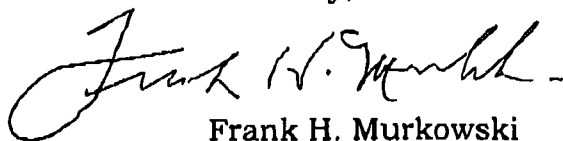
Fingerprints are an additional way of identifying a witness who elects not to show a driver's license. Because a witness served with a subpoena may ultimately fail to honor the subpoena, it is necessary to obtain this independent means of identification. It must be recognized, however, that fingerprints are not a guarantee that the witness will be identified. If the person does not have a set of fingerprints on file to match against, the witness might not be positively identified. Because the focus of the investigation is not on the witness, the bill requires that, unless certain circumstances exist, the fingerprints and any photographs of the witness be destroyed once the person has been positively identified or the case is complete.

The bill also makes it a misdemeanor crime to refuse or resist the taking of photographs or fingerprints. The intent of this provision is to avoid the necessity of using force to photograph or fingerprint witnesses. It is expected that the police officer will advise the person that if the person forcibly resists being photographed or fingerprinted the person will be arrested; this should encourage voluntary compliance and will allow witnesses to go on their way sooner.

In conclusion, this bill recognizes the needs of the police to investigate serious crimes that endanger the safety of innocent citizens, and balances that police authority with the rights of ordinary citizens.

I urge your support of this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is fluid and cursive, with a long horizontal stroke at the end.

Frank H. Murkowski
Governor

Enclosure

HOUSE CS FOR CS FOR SENATE BILL NO. 3005(JUD) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - THIRD SPECIAL SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 8/6/06

Offered: 8/4/06

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to contempt of court and to temporary detention and identification of**
2 **persons; and providing for an effective date."**

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

4 * **Section 1.** AS 09.50.020(a) is repealed and reenacted to read:

5 (a) A person who commits a criminal contempt is guilty of a class A
6 misdemeanor. A person who commits a civil contempt is subject to damages, a civil
7 penalty of \$5,000 or less for each violation, and other orders as the court finds
8 appropriate.

9 * **Sec. 2.** AS 12.50 is amended by adding a new section to read:

10 **Article 3. Temporary Detention and Identification of Persons.**

11 **Sec. 12.50.201. Temporary detention and identification of persons.** (a) A
12 peace officer may temporarily detain a person under circumstances that give the
13 officer reasonable suspicion that

14 (1) the person witnessed or was at or near the scene of the commission

1 of a felony crime against a person under AS 11.41, arson under AS 11.46.400 or
2 11.46.410, criminal mischief under AS 11.46.475 or 11.46.480, or misconduct
3 involving weapons under AS 11.61.190 or 11.61.195(a)(3);

4 (2) the person has information of material aid in the investigation of
5 that crime; and

6 (3) the temporary detention of the person is reasonably necessary to
7 obtain or verify the identification of the person, to obtain an account of the crime, to
8 protect a crime victim from imminent harm, or for other exigent circumstances.

9 (b) A peace officer who temporarily detains a person under (a) of this section
10 may

11 (1) detain the person only as long as reasonably necessary to
12 accomplish the purposes of that subsection;

13 (2) take one or more photographs of the person, if photographs can be
14 taken without unreasonably delaying the person or removing the person from the
15 vicinity; and

16 (3) if the person does not provide valid government-issued
17 photographic identification or other valid identification that the officer finds to be
18 reliable to identify the person, or the officer has reasonable suspicion that the
19 identification is not valid,

20 (A) serve a subpoena on the person to appear before the grand
21 jury where the crime was committed; and

22 (B) take the person's fingerprint impressions if

23 (i) the crime under investigation is murder, attempted
24 murder, or misconduct involving weapons under AS 11.61.190 or
25 11.61.195(a)(3); and

26 (ii) fingerprint impressions can be taken without
27 unreasonably delaying the person or removing the person from the
28 vicinity.

29 (c) A peace officer electing to serve a subpoena under (b) of this section may
30 not require the person to sign the subpoena or another document. The officer or the
31 subpoena must advise the person that failure to honor the subpoena may be punishable

1 as criminal contempt of court under AS 09.50.010. A person receiving a subpoena to
 2 testify under (b) of this section may request the district attorney to withdraw the
 3 subpoena if, before the grand jury proceeding for which the person has been served a
 4 subpoena to appear, the person provides the peace officer who served the subpoena or
 5 the lead investigator with valid government-issued photographic identification or other
 6 valid identification that the officer or lead investigator finds to be reliable to identify
 7 the person.

8 (d) Photographs or fingerprints taken under (b) of this section

9 (1) may be used for identification purposes only, and not for criminal
 10 investigative purposes unless it is determined that the person is suspected of
 11 committing a crime within the scope of the investigation; and

12 (2) must be destroyed upon the earlier of the following occurrences
 13 unless it is determined that the person is suspected of committing a crime within the
 14 scope of the investigation:

15 (A) the person has testified in a grand jury or court proceeding
 16 in connection with the matter under investigation; or

17 (B) completion of the prosecution of the crime being
 18 investigated.

19 (e) This section does not limit the authority of peace officers to investigate
 20 crimes, to collect evidence, to photograph crime scenes, evidence, or bystanders, to
 21 issue lawful court process, or to ensure the welfare of crime victims or other persons.

22 (f) A person who refuses or resists the taking of photographs or fingerprints
 23 under this section commits a class B misdemeanor, punishable as provided in
 24 AS 12.55, except that a sentence of imprisonment, if imposed, may not exceed 10
 25 days.

26 (g) Notwithstanding (f) of this section, if the person establishes that the person
 27 does not have information of material aid in the investigation of the crime, it is within
 28 the discretion of the court to determine that this is a civil matter punishable by a civil
 29 fine of not more than \$1,000.

30 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 REPORT. The state has an interest in protecting witnesses from violence or other
2 danger. The Department of Public Safety shall provide a report to the legislature by
3 February 1, 2007. The report must contain proposals for workable measures to protect a
4 witness who must provide information under AS 12.50.201, as added in sec. 2 of this Act, and
5 who might be endangered by providing identifying information to other persons, including
6 gang members who might endanger the witness who provides the information.
7 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Municipality of Anchorage
MUNICIPAL CLERK'S OFFICE
Agenda Document Control Sheet

AR 2006-214

(SEE REVERSE SIDE FOR FURTHER INFORMATION)

| | | |
|----------|--|--|
| 1 | SUBJECT OF AGENDA DOCUMENT <i>ID of witnesses</i> | DATE PREPARED <i>8/11/06</i> |
| | | Indicate Documents Attached <input type="checkbox"/> AO <input checked="" type="checkbox"/> AR <input type="checkbox"/> AM <input type="checkbox"/> AIM |
| 2 | DEPARTMENT NAME Assembly | DIRECTOR'S NAME Daniel A. Sullivan, Chairman |
| 3 | THE PERSON THE DOCUMENT WAS ACTUALLY PREPARED BY <i>Julia Tucker - Assembly Council</i> | HIS/HER PHONE NUMBER <i>343-4419</i> |
| 4 | COORDINATED WITH AND REVIEWED BY | INITIALS DATE |
| | Mayor | |
| | Municipal Clerk | |
| | Municipal Attorney | |
| | Employee Relations | |
| | Municipal Manager | |
| | Anchorage Parks & Recreation | |
| | Fire | |
| | Health & Human Services | |
| | Merrill Field Airport | |
| | Municipal Light & Power | |
| | Office of Management and Budget | |
| | Police | |
| | Port of Anchorage | |
| | Office of Economic & Community Development | |
| | Solid Waste Services | |
| | Public Transportation | |
| | Anchorage Water & Wastewater Utility | |
| | Executive Manager | |
| | Planning Department | |
| | Chief Fiscal Officer | |
| | Heritage Land Bank | |
| | Information Technology Department | |
| | Project Management & Engineering | |
| | Purchasing | |
| | Other | |
| | | |
| | | |
| 5 | Special Instructions/Comments <i>Addendum - Consent Agenda - Resolutions for</i> <i>action</i> | |
| 6 | ASSEMBLY HEARING DATE REQUESTED <i>8/15/06</i> | 7 PUBLIC HEARING DATE REQUESTED <i>—</i> |

M.O.A.
 2006 AUG 11 AM 11:19
 CLERK'S OFFICE