



Alaska State Legislature

Representative Matt Claman

HB 205 Amendment #10

Sponsor Statement

This amendment provides the court with greater discretion in deciding whether a defendant on pretrial release may receive credit towards their sentence of imprisonment for time spent in a program or under electronic monitoring that furthers the reformation and rehabilitation of the defendant. Currently, 12.55.027 sets out guidelines that restrict what qualifies as a “treatment program” and what a defendant may or may not be allowed to do in that program for a judge to grant credit toward their jail sentence. 12.55.027 was an attempt to codify case law, but the courts ruled that the statute is more restrictive. Attempts to codify each situation in which a defendant may be entitled to credit toward their sentence limits the court’s ability to adapt pretrial release standards to account for improved technology and program development. Some modern programs that effectively support rehabilitation and reduce recidivism were not available in past years.

The *Nygren* line of cases established criteria to consider when assessing whether a defendant’s participation in a treatment program qualified as custody for purposes of pretrial jail credits. The courts applied this common law rule in Alaska for close to a quarter-century. In 2007, the legislature enacted AS12.55.027 to codify supplant *Nygren*. But in *McKinley v. State* (2012), the Court of Appeals held that AS12.55.027 imposed a more restrictive rule on the defendant’s eligibility to receive jail credit for pretrial release than *Nygren*. Interest in reducing recidivism rates and concerns with reducing the cost of incarceration has prompted a need to give judges more flexibility to consider the circumstances of the defendant and the program when making a pretrial release decision. Current AS12.55.027 takes a one-size-fits-all model of criminal rehabilitation and reform that may not serve the State’s interests.

The reformative and rehabilitative needs of a defendant vary from case to case. Judges should have reasonable discretion to determine whether a defendant’s pre-trial conditions and their compliance with those conditions is a basis for credit toward their sentence. By considering the defendant, the allegations, public safety, victim’s rights, and the constitutional values of reform and rehabilitation, the court may make this determination. With the advent of new technologies, including sophisticated electronic monitoring devices, it is reasonable to allow the courts to consider how new technologies may facilitate monitoring of a defendant’s movement and behavior. For example, electronic monitors can track a person 24 hours a day to determine their exact location with Global Positioning System technologies at a lower cost than was previously available. Additionally, some monitors can detect drug and alcohol use. This modern technology will allow a judge and the DOC to evaluate the defendant’s behavior with greater certainty.

In addition to electronic monitoring, reformation programs like substance abuse treatment programs and work-release programs may further rehabilitation before an offender is sentenced. Experience shows that persons convicted are less likely to recidivate if they participate in one of these programs.

The population of un-sentenced individuals housed in the Department of Corrections has increased over the past several years from an average of 677 in FY2009 to 902 in FY2013. This increase is costly and does not encourage rehabilitation of un-sentenced offenders. Extended pretrial incarceration of nonviolent, first-time offenders may actually increase the recidivism rate. This smart justice reform is a step toward cost savings, innovation in rehabilitation and reformation programs, and encouraging offenders to reengage with society in an orderly and supervised manner as ordered by the court.