

# ALASKA STATE LEGISLATURE

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#### HOUSE BILL 296 ~ Sponsor Statement

#### House Judiciary Committee

**"An Act relating to service of process on prisoners; relating to the crime of escape; relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."**

HB 296, addresses ambiguities that have risen from recent court cases involving prisoner issues. It clarifies the permissible method of personally serving process on incarcerated prisoners. It also clarifies the second and fourth degree escape statutes. The bill does three things;

1. For the purpose of service of process on state prisoners HB296 references the definition of "correctional facility" in AS 33.30.901 to clarify the manner in which incarcerated prisoners can be served civilly while incarcerated. The bill also makes it clear that the statute setting for the procedure for personally serving incarcerated persons, AS 09.05.030, is an indirect amendment to Alaska Civil 4. These changes will ensure there is a standardized legal process for serving process on prisoners. It will cure the problem in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010), that caused the Alaska Supreme Court to hold that prison officials were not peace officers who could serve legal summons and complaints on incarcerated prisoners.

2. This bill also defines what constitutes the crime of escape in the second degree. The result in *Bridge v. State* 258 P.3d 923 (Alaska 2011) was suggested for Legislative review from the Legal Services Annual Report (Dec. 2011). Bridge, was charged with driving with a suspended license, a class A misdemeanor. He could not post bail and was therefore held in jail. He was then transferred to a halfway house. He left the facility without permission and was caught. As a result of the escape he was charged with escape in the second degree, a class B felony. The Alaska Court of Appeals found that although Bridge was in the custody of the Department of Corrections, he was not "confined", because the halfway house did not have staff whose duty it was to prevent prisoners from leaving. This bill defines escape in the second degree as being from a "secure correctional facility" while under detention for a misdemeanor. Further, a "secure correctional facility" is defined as using construction or security fixtures or officers or other persons that are authorized to prevent persons under detention from departing such facilities without unlawful authorization. Other escapes by misdemeanants are fourth degree escapes, a class A misdemeanor. This bill will

codify the holding in Bridge and will avoid future questions as to what constitutes escape in the second degree.

3. This bill deletes the repeal of provisions passed by the legislature in 2007, AS 12.55.100(f) and AS 33.16.150(g), requiring electronic monitoring as a special condition of probation or parole for offenders whose offense was related to a criminal street gang. Repealing the December 31, 2012 sunset date will continue to provide the court system and the Department of Corrections an important tool to keep neighborhoods safe from gang related crime.

This bill provides clearer guidelines for civil service of process of persons under the custody of the Department of Corrections removing question raised in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010). The bill refines escape in the second degree answering questions from *Bridge v. State* 258 P.3d 923 (Alaska 2011). This bill is necessary to avoid future litigation that may arise involving these issues.

Please contact my legislative aide, Miles Brookes, at 465-4940 with any questions.