

HOUSE BILL NO. 174
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOPONEN

Introduced: 3/1/91

Referred: Health, Education & Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act related to sentencing and the service of sentences; providing for alternative
2 incarceration programs; providing for an alternative incarceration pilot program; and
3 providing for an effective date."

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

5 * Section 1. AS 11.56.340(a) is amended to read:

6 (a) A person commits the crime of unlawful evasion in the first degree if, while charged
7 with or convicted of a felony,

8 (1) the person fails to return to official detention within the time authorized
9 following temporary leave granted for a specific purpose or limited period, including leave
10 granted under AS 33.30.181; or

11 (2) while on furlough under AS 33.30.101 - 33.30.131, the person fails to return
12 to the place of confinement or residence within the time authorized by those having direct
13 supervision;

14 (3) the person, while sentenced or assigned to an alternative incarceration

1 **program, leaves the place of the alternative incarceration without permission.**

2 * Sec. 2. AS 11.56.350(a) is amended to read:

3 (a) A person commits the crime of unlawful evasion in the second degree if, while
4 charged with or convicted of a misdemeanor,

5 (1) the person fails to return to official detention within the time authorized
6 following temporary leave granted for a specific purpose or limited period, including leave
7 granted under AS 33.30.181; or

8 (2) while on furlough under AS 33.30.101 - 33.30.131, the person fails to return
9 to the place of confinement or residence within the time authorized by those having direct
10 supervision;

11 (3) **the person, while sentenced or assigned to an alternative incarceration**
12 **program, leaves the place of the alternative incarceration without permission.**

13 * Sec. 3. AS 11.56.390 is amended to read:

14 Sec. 11.56.390. **DEFINITIONS [DEFINITION].** In AS 11.56.300 - 11.56.390,

15 (1) **"alternative incarceration program" means incarceration of a prisoner**
16 **other than in a correctional facility and exclusive of assignment of the prisoner to a**
17 **furlough or correctional restitution center; the term includes home arrest or detention**
18 **enforced through electronic monitoring or phone checks with intensive supervision;**

19 (2) "contraband" means any article or thing that [WHICH] persons confined in
20 a correctional facility are prohibited by law from obtaining, making, or possessing in that
21 correctional facility.

22 * Sec. 4. AS 12.55.015(a) is amended to read:

23 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on
24 a defendant convicted of an offense, may singly or in combination

25 (1) impose a fine when authorized by law and as provided in AS 12.55.035;

26 (2) order the defendant to be placed on probation under conditions specified by
27 the court that may include provision for active supervision;

28 (3) impose a definite term of periodic imprisonment;

29 (4) impose a definite term of continuous imprisonment;

30 (5) order the defendant to make restitution under AS 12.55.045;

31 (6) order the defendant to carry out a continuous or periodic program of

1 community work under AS 12.55.055;

2 (7) suspend execution of all or a portion of the sentence imposed under
3 AS 12.55.080;

4 (8) suspend imposition of sentence under AS 12.55.085;

5 (9) order the forfeiture to the commissioner of public safety of a deadly weapon
6 that was in the actual possession of or used by the defendant during the commission of an
7 offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

8 (10) order the defendant, while incarcerated, to participate in or comply with the
9 treatment plan of a rehabilitation program that is related to the defendant's offense or to the
10 defendant's rehabilitation, if the program is made available to the defendant by the Department
11 of Corrections;

12 (11) order the defendant to successfully complete a periodic or continuous
13 term in an alternative incarceration program under conditions imposed by the court and
14 under the terms and conditions of the alternative incarceration program.

15 * Sec. 5. AS 12.55.085(b) is amended to read:

16 (b) At any time during the probationary term of the person released on probation, a
17 probation officer may, without warrant or other process, rearrest the person so placed in the
18 officer's care and bring the person before the court, or the court may, in its discretion, issue a
19 warrant for the rearrest of the person. The court may revoke and terminate the probation if the
20 interests of justice require, and if the court, in its judgment, has reason to believe that the person
21 placed upon probation is

22 (1) violating the conditions of probation;

23 (2) engaging in criminal practices; [OR]

24 (3) violating an order of the court to participate in or comply with the treatment
25 plan of a rehabilitation program under AS 12.55.015(a)(10); or

26 (4) violating an order of the court to successfully complete a periodic or
27 continuous term in an alternative incarceration program under conditions imposed by the
28 court and under the terms of the alternative incarceration program.

29 * Sec. 6. AS 12.55.100(a) is amended to read:

30 (a) While on probation and among the conditions of probation, the defendant may be
31 required

- 1 (1) to pay a fine in one or several sums;
- 2 (2) to make restitution or reparation to aggrieved parties for actual damages or
3 loss caused by the crime for which conviction was had;
- 4 (3) to provide for the support of any persons for whose support the defendant is
5 legally responsible;
- 6 (4) to perform community work in accordance with AS 12.55.055;
- 7 (5) to participate in or comply with the treatment plan of an inpatient or outpatient
8 rehabilitation program specified by either the court or the defendant's probation officer that is
9 related to the defendant's offense or to the defendant's rehabilitation; [AND]
- 10 (6) to satisfy the screening, evaluation, referral, and program requirements of an
11 agency authorized by the court to make referrals for rehabilitative treatment or to provide
12 rehabilitative treatment; and
- 13 (7) to successfully complete a periodic or continuous term in an alternative
14 incarceration program under conditions imposed by the court and under the terms and
15 conditions of the alternative incarceration program.

16 * Sec. 7. AS 12.55.110 is amended by adding a new subsection to read:

17 (c) Good cause justifying the revocation of a suspended sentence is established if the
18 defendant has violated an order of the court or a term or condition of an alternative incarceration
19 program that the defendant has been ordered to successfully complete.

20 * Sec. 8. AS 12.55.185 is amended by adding a new paragraph to read:

21 (12) "alternative incarceration program" has the meaning given in AS 11.56.390.

22 * Sec. 9. AS 33.30.011 is amended to read:

23 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

24 (1) establish, maintain, operate, and control correctional facilities suitable for the
25 custody, care, and discipline of persons charged or convicted of offenses against the state or held
26 under authority of state law;

27 (2) classify prisoners;

28 (3) for persons committed to the custody of the commissioner, establish programs,
29 including alternative incarceration programs and furlough programs that are reasonably
30 calculated to

31 (A) protect the public;

- 1 (B) maintain health;
- 2 (C) create or improve occupational skills;
- 3 (D) enhance educational qualifications;
- 4 (E) support court-ordered restitution; and
- 5 (F) otherwise provide for the rehabilitation and reformation of prisoners,
- 6 facilitating their reintegration into society;
- 7 (4) provide necessary medical services for prisoners in correctional facilities or
- 8 who are committed by a court to the custody of the commissioner, including examinations for
- 9 communicable and infectious diseases; [AND]
- 10 (5) provide necessary psychological or psychiatric treatment if a physician or
- 11 other health care provider, exercising ordinary skill and care at the time of observation, concludes
- 12 that
- 13 (A) a prisoner exhibits symptoms of a serious disease or injury that is
- 14 curable or may be substantially alleviated; and
- 15 (B) the potential for harm to the prisoner by reason of delay or denial of
- 16 care is substantial;
- 17 (6) establish minimum standards for sex offender treatment programs offered to
- 18 persons who are committed to the custody of the commissioner.
- 19 * Sec. 10. AS 33.30.091 is amended to read:
- 20 Sec. 33.30.091. DESIGNATION OF PROGRAMS. Except as provided in AS 33.30.096,
- 21 33.30.111, [AS 33.30.111] and 33.30.161, the commissioner may assign a prisoner committed
- 22 to the commissioner's custody to a program established under AS 33.30.011(3) considering
- 23 (1) safeguards to the public;
- 24 (2) the prospects for the prisoner's rehabilitation;
- 25 (3) the availability of program and facility space;
- 26 (4) the prospect of future judicial proceedings requiring the presence of the
- 27 prisoner;
- 28 (5) the nature and circumstances of the offense for which the prisoner was
- 29 sentenced;
- 30 (6) the needs of the prisoner as determined by a classification committee and any
- 31 recommendations made by the sentencing court;

- 1 (7) the record of convictions of the prisoner with particular emphasis on crimes
2 specified in AS 11.41;
- 3 (8) the use of drugs or alcohol by the prisoner;
- 4 (9) the length of the prisoner's sentence; and
- 5 (10) other criteria considered appropriate by the commissioner, including
6 experimental evaluation of correctional programs that are consistent with protection of the public
7 and reformation of the prisoner.

8 * Sec. 11. AS 33.30 is amended by adding a new section to read:

9 Sec. 33.30.096. ALTERNATIVE INCARCERATION. (a) The commissioner may assign
10 a prisoner committed to the commissioner's custody to an alternative incarceration program.
11 Under regulations adopted for the purpose, if the commissioner determines with reasonable
12 probability that a prisoner can live under reduced supervision without violating the law or the
13 conditions established for the conduct of the prisoner, the commissioner may place the prisoner
14 in an alternative incarceration program, after considering

- 15 (1) the factors in AS 33.30.091;
- 16 (2) violations, if any, by the prisoner of a condition of a prior furlough or
17 assignment to an alternative incarceration program;
- 18 (3) the history, if any, of institutional misconduct by the prisoner; and
- 19 (4) the best interests of the prisoner and the public.

20 (b) The restrictions and supervision required for an assignment to an alternative
21 incarceration program must provide safeguards that minimize risk to the public and include, as
22 a minimum,

- 23 (1) detention of the prisoner by means of electronic monitoring, phone checks,
24 and intensive supervision;
- 25 (2) frequent contact with the prisoner by persons supervising the prisoner;
- 26 (3) knowledge by supervisory staff of the location of the prisoner;
- 27 (4) periodic reports by supervisory staff to the commissioner on the performance
28 of the prisoner;
- 29 (5) a requirement that a person supervising a prisoner is obliged to immediately
30 report to the commissioner any violation of a condition set for the prisoner's conduct; and
- 31 (6) frequent random urinalysis and breath testing of the prisoner.

1 * Sec. 12. AS 33.30.901 is amended by adding a new paragraph to read:

2 (14) "alternative incarceration program" means incarceration of a prisoner other
3 than in a correctional facility and exclusive of assignment of the prisoner to a furlough or
4 correctional restitution center; the term includes home arrest or detention enforced through phone
5 checks or electronic monitoring, with intensive supervision.

6 * Sec. 13. ALTERNATIVE INCARCERATION PILOT PROGRAM. The commissioner of
7 corrections shall establish by July 1, 1991, an alternative incarceration pilot program in at least two
8 judicial districts of the state. The program shall be designed to initially accommodate at least 20
9 prisoners in each of the two judicial districts sentenced directly to the program by a court or selected
10 by the commissioner under AS 33.30.096, enacted by sec. 11 of this Act. The program shall provide
11 at a minimum for a period of electronic monitoring, followed by a period of intensive supervision, with
12 gradually decreasing supervision. At least weekly urinalysis and breath testing for alcohol or controlled
13 substances shall be required.

14 * Sec. 14. REPORT TO LEGISLATURE. The commissioner of corrections shall report to the
15 legislature concerning the progress, problems, and success of the alternative incarceration pilot program
16 established by sec. 13 of this Act. Interim reports shall be filed with the legislature by February 1, 1992,
17 and by February 1, 1993, and a final report by the third day of the second regular session of the
18 Eighteenth Alaska State Legislature.

19 * Sec. 15. Section 13 of this Act is repealed June 30, 1993.

20 * Sec. 16. This Act takes effect immediately under AS 01.10.070(c).