

HB

775

COMMITTEE REPORT

2/13/76

HOUSE

Mr. Speaker:

Date 2/13/76

The Committee on JUDICIARY has had HB 775

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR HB 775 AND THAT

CS FOR HB 775 DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

Tony Martin _____
_____ H. Ross _____
_____ _____
W. H. G. T. _____
_____ _____
_____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Tony Martin Chairman

File 775

April 22, 1976

Rules Committee
House of Representatives
Alaska State Legislature
Ninth Legislature, Second Session
Pouch Y
Juneau, Alaska 99811.

Dear Sirs:

The Legislative Affairs Committee of the Tanana Valley Bar Association at Fairbanks has reviewed the committee substitute for House Bill 775 and would like to compliment you for what appears to us to be a substantial and excellent revision of the old original House Bill 775. It appears that our original comments on 775 was remembered in the more recent revision of the bill.

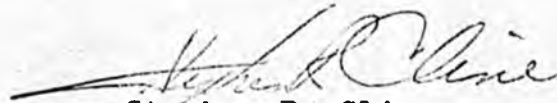
Although our committee agrees in the definitions of escape and unlawful evasion and the breakdown to first, second, and third degree thereof, we do not agree completely with the penalty provisions.

Section 11.30.095F (2) provides for mandatory minimum imprisonment term without discretion by the court to suspend or grant probation or parole. Subsection (g) then provides that such sentence must be consecutive to existing sentences. Although our committee, by majority vote, agreed with the provision for consecutive sentences, as provided for in (g), we unanimously opposed subsection 2 requiring minimum imprisonment and depriving the court of discretion to suspend all or part of that term.

Our committee has uniformly gone on record as opposing legislation taking discretion in sentencing away from the judges. It is the feeling of all of our members that it is a bad precedent to deprive the court of any discretion within the area of sentencing. We feel that each individual case should be evaluated on its own merits.

Again we compliment you on your revision of House Bill 775 and would have only a single objection, above voiced, to the bill as it now appears in your committee substitute as offered on April 9, 1976.

Sincerely,



Stephen R. Cline
Member - T.V.B.A. Legislative
Affairs Committee

SRC:mb

- cc: Mike Bradner
- Fred Brown
- Steve Cowper
- Terry Gardiner ✓
- Glenn Hackney
- Charles Parr
- Tim Wallis
- John Butrovich
- John Huber
- Terry Miller
- John Sackett
- Edward Willis
- Robert Ziegler
- Brian Shortell



J. J. Connelly
Chairman T.V.B.A.
Legislative Committee

Dear Terry:

I notice that SB 479 is in Senate Rules and HB 775 is in House Rules. Commissioner Burton, when asked to comment on both, had some interesting suggestions which I'd like to share with you.

Fran


A handwritten signature in black ink, appearing to be the name 'Fran' written in a cursive style.

STATE
of ALASKA

MEMORANDUM

TO: Fran Ulmer, Legislative Assistant
Office of the Governor

DATE : March 8, 1976

FROM:  Richard L. Burton, Commissioner
Department of Public Safety

SUBJECT: HB-775 and SSSB 479

HB 775 and SB 479 each have merit. By combining the better parts of each, a stronger bill would be enacted.

SB 479 includes the desired "or from a corrections officer". However, to eliminate legal argument it should be inserted between "under lawful arrest" and "from a jail or institution". This would eliminate the argument that in order to escape "from a correctional officer" the escapee must be in a jail or institution.

While SB 479 proposes the same penalty for escape after "arrest" as escape after "conviction", HB 775 changes only the penalty for escape after conviction.

HB 775 eliminates a loophole by amending AS 33.30.150 with wording that is identical to that already in 33.30.250 and 33.30.260.

HB 775 also includes 33.30.150, 33.30.250 and 33.30.260 under the mandatory penalty clause.

SB 479 adds "escape from custody or confinement" to the crimes (murder and rape) when the court may not prescribe less than minimum penalty. This is AS 11.05.150. Although one method of correcting this statute is piecemeal, a preferable method would be to repeal it. It is now used to completely subvert the intent of the legislature after that body sets minimum penalties. The courts already have suspended sentences, probation, and deferred imposition on sentence when they want to turn someone loose. With 11.05.150 on the books, legislative intent to toughen penalties by fixing minimum sentences is completely meaningless, except that it remains an insult to the intelligence of the legislative body as a whole.

AS 11.05.150 says in effect that any time any judge disagrees with a statute enacted by sixty elected representatives, he may completely disregard it.

The personal opinion and philosophy of one person therefore replaces that of the legislature.

SB-579 and HB 775 combined are attached.

Form 01-006

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO: Department of

- Administration
- Commerce & Econ. Develop.
- Community & Regional Aff.
- Education
- Env. Conservation
- Fish and Game
- Health & Social Svcs.
- Highways
- Labor
- Law
- Military Affairs
- Natural Resources
- Public Safety
- Public Works
- Revenue

ATTN:

Richard Burton

- Return letter w/draft
- Return letter w/comment
- Reply direct
- Your information
- Call me
- Appropriate action
- As requested
-

REMARKS:

Please comment on

HB 775 & SSSB 479

From:

Alan Ulmer

Date:

5/19

Introduced: 2/13/76
Referred: Judiciary

1 IN THE SENATE

BY ORSINI

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 479 + H/S 775 Combined

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for a mandatory penalty for escape
7 from custody or confinement."

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

9 * Section 1. AS 11.30.090 is amended to read:

10 * Sec. 11.30.090. ESCAPE FROM CUSTODY OR CONFINEMENT. A person
11 who escapes or attempts to escape from the custody of a peace officer
12 under a lawful arrest, from a jail or institution in which he is de-
13 tained by a peace officer ^{or} or a corrections officer or confined by
14 direction of a court in this state, or from custody under process issued
15 by a court in this state is punishable,

16 * (1) if the custody or confinement is by an arrest on a charge
17 of a felony, or conviction of a felony, by imprisonment for not less
18 than one year nor more than three years, to commence at the expiration
19 of the terms limited by previous judgments on conviction for crime, if
20 any; the imposition or execution of the minimum imprisonment provided in
21 this section shall not be suspended and probation or parole shall not
22 be granted until the minimum imprisonment provided in this section for
23 the offense is served [BY A FINE OF NOT MORE THAN \$5,000, OR BY IM-
24 PRISONMENT FOR NOT LESS THAN ONE YEAR NOR MORE THAN THREE YEARS, OR BY
25 BOTH]; or

26 (2) if the custody or confinement is for extradition, or by
27 an arrest, or charge of, or conviction of a misdemeanor, by a fine of
28 not more than \$1,000, or imprisonment for not more than one year, or by
29 both.

1 * (3) if the escape is by a prisoner exercising privileges
2 under AS 33.30.150, 33.30.250 or 33.30.260, by imprisonment for not less
3 than one year nor more than three years. Imposition or execution of
4 sentence shall not be suspended and probation or parole shall not be
5 granted until the minimum imprisonment provided in this paragraph is
6 served.

7 * Sec. 2. AS 33.30.150 is amended to read:

8 * Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with
9 good behavior serving a sentence of one year or more may be permitted as
10 a privilege and not as a right to visit with his family at a place other
11 than his place of confinement and at his own expense for a period not
12 exceeding one week nor more frequently than once each six months under
13 rules and regulations adopted by the commissioner and in his sole dis-
14 cretion. The wilful failure of a prisoner to return to the place of
15 confinement not later than the expiration of a period during which he is
16 authorized to be away from the place of confinement under this section,
17 is an escape from the place of confinement and is punishable under the
18 laws relating to escape.

19 * Sec. 3. AS 11.05.150 is amended to read:

20 Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in
21 a case of murder, escape from custody or confinement, or rape, the court
22 may, upon conviction, when in its opinion the facts and circumstances
23 make the minimum penalty provided in this title manifestly too severe,
24 impose a lesser penalty, either of a fine or imprisonment or both. When
25 less than the minimum penalty is imposed, the court shall set out the
26 reasons for its action on the record in the case.



file
HB 775

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

TO: House Judiciary Committee

FROM: Criminal Justice Center

SUBJECT: HB 775 and CS For HB 775.

DATE: March 19, 1976

PROBLEMS ASSOCIATED WITH EXISTING AS 11.30.090

1. It provides no legislative definition of escape. Court decisions (Richards v. State, 451 P2d 359 (1969), and Alex . State, 484 P2d 677 (1971).) have filled this gap, although not entirely in a satisfactory manner, for escapes from confinement but not for escapes from custody.

2. It deals with all forms of escape - from custody or confinement, by felons or misdemeanants, before conviction or after, attempted or successful - in the same section. While it distinguishes between felons and misdemeanants in so far as punishment is concerned, it makes no other distinctions as to the circumstances of the at empt or of the escape, nor does it effectively permit real distinctions to be made among individual defendants.

3. It does not deal with all instances where a person in confinement fails to return after exercising lawful leave privileges, e.g., 33.30.150.

4. It does not appear to apply to escapes or attempted escapes by juveniles.

5. It may be that a person who escapes from the custody of a corrections official (not from a jail, institution, etc.) does not, under a strict legal interpretation of the statute, commit a crime. Corrections officials are not peace officers - either under the definition provided in 11.30.100(1), or under the definition in AS 01.10.060, unless one could reasonably construe 11.30.100(1)(b) to cover them.

6. It is interesting to note that while any other crime committed in connection with an escape or attempted escape can be

prosecuted separately, Chapter 30 c. Title 11 in two sections - 11.30.050 and 11.30.070 - creates distinct assault offenses involving those who aid in escapes. No similar distinctions are made for those who do escape, or attempt to escape. In fact, the punishment upon conviction of either 11.30.050 or 070 is greater than the punishment for escape. Obviously, it is good public policy to try to deter individuals from aiding in escapes by engaging in assaultive behavior, but should we not treat those who escape alone in a similar fashion?

PROBLEMS ASSOCIATED WITH CS FOR HB 775

1. It does not adequately deal with objections (1) (2) (4) (5) and (6) to the existing statute. Our revision answers these objections.

2. AS 11.30.090(a)(4), as proposed, may be unconstitutional because it imposes the same penalties on misdemeanants as on felons, but, in any event, it is bad public policy because it does not distinguish between individual circumstances in any case. For example, the felon with 15 years left on a sentence and the misdemeanant with 15 days are treated identically. Moreover, because misdemeanants and felons are lumped together, the lowest denominator (misdemeanants) controls the upwards bounds of the punishment range. The (a)(4) may not present a deterrent to a felon, unless he has two years of less to run on his original sentence. Our revision answers this objection.

3. If the proposed revision was enacted all escapes from leave would require a proof of "wilful"ness, but any other escape would just require proof of general intent (as defined in Alex, supra.). The "intent" element should be consistent throughout. Under our revision a future Alex would be vindicated if the jury believed his story - that he had no intent to escape, was an amnesia victim, fell off a truck, etc.. This would appear to be a more just result which is probably why the test of wilful is used everywhere else.

4. CS for HB775 does not deal with an offender who has been convicted but not sentenced on a felony (or misdemeanor) in terms of requiring consecutive sentences. (sec AS 11.30.090(c) as proposed, which uses "then existing sentences".) Our revision so provides. (see 11.30.095 (g).)

CHANGES IN CS FOR HB 775 WHICH SHOULD BE NOTED

1. Escape has been separated from failure to return from leave.
2. Three degrees of escape have been established.
3. A new section, UNLAWFUL EVASION, deals with failure to return from leaves.
4. Possession of a deadly weapon while on escape or unlawful evasion is made a crime. This remedies a gap in the law whereby a person who had never been convicted, but escaped after arrest, could legally possess a deadly weapon.

5. Penalties are separated from the substantive definitions of

escape and unlawful evasion and are now provided for in a new section, 11.30.095.

6. Fines have been dropped from the penalties.

7. With the exception of extradition - which now carries a penalty of not less than one year nor more than five - escapes under 11.30.090(a)(2) of CS for HB 775, now carry a penalty of not less than three months nor more than one year. The three month provision is an addition.

8. As previously stated, penalties for failure to return from leaves (unlawful evasions) have been distinguished for felons and misdemeanants to overcome constitutional objections. (see 11.30.095 (d) and (e).)

9. The language concerning minimum sentence authority and limitations in 11.30.095(f) is based on AS 28.35.030. It has the same force and effect as section (b) of CS for HB 775, except that 11.30.095(h) provides an incentive to those who escape or commit unlawful evasions to voluntarily turn themselves in by eliminating the mandatory minimum sentence provisions. However, a judge may still impose a heavy sentence in such cases if the circumstances warrant the same.

10. Section 3 of our revision provides an amendment to AS 11.30.100 by eliminating the existing definitions and substituting a single definition of "official detention" which should solve all definitional problems. (see objections (1), (4) and (5) to existing AS 11.30.090.)

For an Act Entitled: "An Act relating to unlawful absence from custody or confinement"

- * Section 1. AS 11.30.090 is repealed and reenacted to read:
Sec. 11.30.090 ESCAPE.

(a) A person commits an escape if without lawful authority he
(1) wilfully removes himself from official detention, or
(2) commits an unlawful evasion under 093 of this chapter and leaves or attempts to leave the state.

(b) An offense charged under (a) of this section is punishable as an escape in the first degree if

- (1) the official detention is on a charge of a felony;
(2) the official detention is for extradition; or
(3) the person, during the escape or at any time prior to his being restored to official detention, has in his possession a deadly weapon.

(c) An attempt to escape under paragraph (a) (1) of this section which under paragraph (b) (1) (2) (3) of this section is an escape in the first degree is punishable as an escape in the second degree.

(d) Any other escape or attempted escape is punishable as an escape in the third degree.

- * Sec 2. AS 11.30 is amended by adding new sections to read:
Sec. 11.30.093 UNLAWFUL EVASION.

(a) A person commits an unlawful evasion if he wilfully fails to return to official detention as defined in section 100 of this chapter following temporary leave granted for a specific purpose or limited period including, but not limited to privileges granted under AS 33.30.150, 33.30.250 or 33.30.260.

(b) An offense charged under (a) of this section is punishable as an unlawful evasion in the first degree if the official detention is on a charge of a felony.

(c) An offense charged under (a) of this section is punishable in the same manner as an escape in the first degree if the person during the time of unlawful evasion or at any time prior to his being restored to official detention has in his possession a deadly weapon.

(d) Any other offense under this section is punishable as an unlawful evasion in the second degree.

Sec. 11.30.095 PENALTIES FOR ESCAPE AND UNLAWFUL EVASION.

(a) A person convicted of escape in the first degree shall be sentenced to a specified term of not less than one year nor more than five years.

(b) A person who is convicted of escape in the second degree shall be sentenced to a specified term of not less than six months nor more than two years.

(c) A person who is convicted of escape in the third degree shall be sentenced to a specified term of not less than three months nor more than one year.

(d) A person who is convicted of unlawful evasion in the first degree shall be sentenced to a specified term of not less than three months nor more than one year.

(e) A person who is convicted of unlawful evasion in the second degree shall be sentenced to a specified term of not less than thirty days nor more than one year.

(f) (1) When satisfied that the ends of justice and the best interests of the public as well as the defendant will be served thereby, the court may suspend the imposition or execution of a portion of the sentence greater than the minimum sentence authorized under this section, and place the defendant on probation.

(2) However, the execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided in the applicable subsection of this section has been served, nor may imposition of sentence be suspended, except upon the condition that the defendant be imprisoned for no less than the minimum period provided under the applicable subsection of this section, nor may the minimum penalty provided for in this section be reduced under AS 11.05.150.

(g) Terms of imprisonment required under this section are to be consecutive to sentences then existing or which may be imposed pursuant to the official detention from which the person has escaped.

(h) When an offender has escaped or has committed an unlawful evasion and voluntarily surrenders himself to a peace officer or employee of the Division of Corrections, under circumstances when there is no imminent likelihood of his being apprehended, (f) (2) of this section is inapplicable.

* Sec 3. AS 11.30.100 is amended to read:

Sec. 11.30.100. Definitions relating to escape and Unlawful Evasion [FROM CUSTODY OR CONFINEMENT]. As used in §090-095 of this chapter, unless the context otherwise requires, "Official Detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or to be delinquent, detention for extradition or deportation or any other detention for law enforcement purposes; but "official detention" does not include supervision on probation or parole, or constraint incidental to release on bail.

[(1) "PEACE OFFICER" MEANS AN OFFICER OR EMPLOYEE OR AN AUTHORIZED REPRESENTATIVE OF AN OFFICER OR EMPLOYEE OF THE UNITED STATES, THE STATE OR A POLITICAL SUBDIVISION OF THE STATE WHO HAS AUTHORITY TO EITHER (A) ARREST A PERSON BY TAKING HIM INTO CUSTODY OR (B) DETAIN A PERSON UNDER A WARRANT, ORDER OR OTHER LEGAL PROCESS;]

[(2) "JAIL OR INSTITUTION" MEANS A PENITENTIARY, JAIL, HOUSE OF CORRECTIONS OR OTHER PLACE FOR THE CONFINEMENT OR DETENTION OF PERSONS UPON A WARRANT, ORDER, OR OTHER LEGAL PROCESS. (§ 1 ch 108 SLA 1957)]

* Sec 4. AS 33.30.150 is amended to read:

Sec. 33.30.150. VISITATION PRIVILEGES.

An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093.

Sec 5. AS 33.30.250 (f) is amended to read:

(f) The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section is an unlawful evasion under AS 11.30.093. [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO EACAPE.]

Sec 6. AS 33.30.260 is amended to read:

Sec. 33.30.26. REHABILITATION FURLOUGHS.

The commissioner may authorize a prisoner to participate in educational, training, medical, psychiatric, or other rehabilitation programs approved by the commissioner. When the prisoner is not participating in a rehabilitation program, he shall be confined in the jail unless the commissioner directs otherwise. If the prisoner violates the conditions established for his conduct or custody, the commissioner may order the balance of the prisoner's sentence to be spent in actual confinement. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093. [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE.] (§ 1 ch 67 SLA 1970)

AS 11.050.150 is replaced with a new section reading:

(a) Upon conviction of a crime the court, subject to the described limitations, may impose a lesser penalty than the minimum penalty provided in this title when in its opinion the facts and circumstances make the minimum penalty manifestly too severe. When less than the minimum penalty is imposed, the court shall set out the reasons and supporting facts for its action on the record in the case. *As provided in 1, 2, 3, 4 below*

(1) In the case of murder or rape the court shall not impose a penalty less than the minimum provided.

(2) In the case of a violent felony other than murder or rape for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3) the court may find that the minimum provided is manifestly too severe and impose a penalty of imprisonment less than the minimum ~~xxx~~ only if:

a) the person being sentenced is a promising candidate for rehabilitation, and

b) at the time of sentencing a specific proven rehabilitation program is available for the person being sentenced, and

c) the court provides for a reasonable method of monitoring the rehabilitation program of the person being sentenced.

(3) In the case of escape or unlawful evasion the court may find that the minimum provided is manifestly too severe and impose a penalty of imprisonment less than the minimum if: a preponderance of the evidence shows that:

a) the person ~~being~~ convicted ~~is~~ escaped or evaded detention to avoid a clear and present danger of physical abuse, or
b) the person convicted escaped or evaded detention because of inhumane conditions caused either wilfully or by neglect.

"cruel & unusual punishment"
(4) For all other crimes the court may find that the minimum provided is manifestly too severe and impose a lesser penalty either of a fine or imprisonment or both.

(b) Nothing in this section prohibits either the defendant or the state from appealing the sentence pursuant to the provisions of AS 12.55.120.

Amend the Havelock proposal by :

striking on page 2 paragraph (f)(2) the following language:
nor may the minimum penalty provided for in this section
be reduced under AS 11.05.150.

adding the following language ~~AFTER~~ after "escaped" on page 2
paragraph (g)

,unless the court has determined that the minimum sentence
provided by this section would be manifestly too severe pursuant
to the provisions of AS 11.05.150.(4) 3

adding the following language after "family" on page 3 on Visitation
Privileges

or any person

Original Sponsors: Cotten & Gardiner

Offered: 4/9/76
For Today's Calendar

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 775 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unlawful absence from custody or
7 confinement."

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

9 * Section 1. AS 11.30.090 is repealed and re-enacted to read:

10 Sec. 11.30.090. ESCAPE. (a) A person commits an escape if without
11 lawful authority he

12 (1) wilfully removes himself from official detention; or

13 (2) commits an unlawful evasion under sec. 93 of this chapter
14 and leaves or attempts to leave the state.

15 (b) An offense charged under (a) of this section is punishable as
16 an escape in the first degree if

17 (1) the official detention is on a charge of a felony;

18 (2) the official detention is for extradition; or

19 (3) the person, during the escape or at any time before his
20 being restored to official detention, has in his possession a deadly
21 weapon.

22 (c) An attempt to escape under (a)(1) of this section which under
23 (b)(1), (2) or (3) of this section is an escape in the first degree is
24 punishable as an escape in the second degree.

25 (d) Any other escape or attempted escape is punishable as an
26 escape in the third degree.

27 * Sec. 2. AS 11.30 is amended by adding new sections to read:

28 Sec. 11.30.093. UNLAWFUL EVASION. (a) A person commits an
29 unlawful evasion if he wilfully fails to return to official detention, as

1 defined in sec. 100 of this chapter, following temporary leave granted
2 for a specific purpose or limited period including but not limited to
3 privileges granted under AS 33.30.150, 33.30.250 or 33.30.260.

4 (b) An offense charged under (a) of this section is punishable as
5 an unlawful evasion in the first degree if the official detention is on
6 a charge of a felony.

7 (c) An offense charged under (a) of this section is punishable in
8 the same manner as an escape in the first degree if the person during
9 the time of unlawful evasion or at any time before his being restored to
10 official detention has in his possession a deadly weapon.

11 (d) Any other offense under this section is punishable as an
12 unlawful evasion in the second degree.

13 Sec. 11.30.095. PENALTIES FOR ESCAPE AND UNLAWFUL EVASION. (a) A
14 person convicted of escape in the first degree is punishable by imprison-
15 ment for not less than one year nor more than five years.

16 (b) A person who is convicted of escape in the second degree is
17 punishable by imprisonment for not less than six months nor more than
18 two years.

19 (c) A person who is convicted of escape in the third degree is
20 punishable by imprisonment for not less than three months nor more than
21 one year.

22 (d) A person who is convicted of unlawful evasion in the first
23 degree is punishable by imprisonment for not less than three months
24 nor more than one year.

25 (e) A person who is convicted of unlawful evasion in the second
26 degree is punishable by imprisonment for not less than 30 days nor
27 more than one year.

28 (f) Suspensions of imposition or execution of sentence or grant-
29 ing of parole shall be governed by the following considerations:

1 (1) when satisfied that the ends of justice and the best
2 interests of the public as well as the defendant will be served, the
3 court may suspend the imposition or execution of a portion of the sen-
4 tence greater than the minimum sentence authorized under this section,
5 and place the defendant on probation.

6 (2) execution of sentence may not be suspended nor may
7 probation or parole be granted until the minimum imprisonment provided
8 under this section has been served, nor may imposition of sentence be
9 suspended, except upon the condition that the defendant be imprisoned
10 for no less than the minimum period provided under this section, nor
11 may the minimum penalty provided for in this section be reduced under AS
12 11.05.150, except upon a finding by the court that the escape or evasion
13 was for the purpose of avoiding a clear and present danger of physical
14 abuse or cruel and unusual conditions caused either wilfully or by
15 neglect.

16 (g) Terms of imprisonment required under this section are consecu-
17 tive to sentences then existing or which may be imposed pursuant to the
18 official detention from which the person has escaped.

19 (h) When an offender has escaped or has committed an unlawful
20 evasion and voluntarily surrenders himself to a peace officer or em-
21 ployee of the division of corrections, under circumstances when there is
22 no imminent likelihood of his being apprehended, (f)(2) of this section
23 is inapplicable.

24 * Sec. 3. AS 11.30.100 is repealed and re-enacted to read:

25 Sec. 11.30.100. DEFINITIONS RELATING TO ESCAPE AND UNLAWFUL DETEN-
26 TION. As used in secs. 90 - 95 of this chapter, unless the context
27 otherwise requires,

28 (1) "cruel and unusual conditions" mean those conditions
29 evidencing a shocking deviation from the conditions commonly acceptable

1 for official detention;

2 (2) "official detention" means arrest, custody following
3 surrender in lieu of arrest, detention in any facility for custody of
4 persons under charge or conviction of crime or alleged or to be
5 delinquent, detention for extradition or deportation or any other deten-
6 tion for law enforcement purposes; but "official detention" does not
7 include supervision on probation or parole, or constraint incidental to
8 release on bail.

9 * Sec. 4. AS 33.30.150 is amended to read:

10 Sec. 33.30.150. VISITATION PRIVILEGES. An honor ^{ed}prison with good
11 behavior serving a sentence of one year or more may be permitted as a
12 privilege and not as a right to visit with his family at a place other
13 than his place of confinement and at his own expense for a period not
14 exceeding one week nor more frequently than once each six months
15 under rules and regulations adopted by the commissioner and in his sole
16 discretion. The wilful failure of a prisoner to return to the place
17 of confinement not later than the expiration of a period during which
18 he is authorized to be away from the place of confinement under this
19 section is an unlawful evasion under AS 11.30.093.

20 * Sec. 5. AS 33.30.250(f) is amended to read:

21 (f) The wilful failure of a prisoner to return to the place of
22 confinement not later than the expiration of any period during which he
23 is authorized to be away from the place of confinement under this sec-
24 tion, is an unlawful evasion under AS 11.30.093 [ESCAPE FROM THE PLACE
25 OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE].

26 * Sec. 6. AS 33.30.260 is amended to read:

27 Sec. 33.30.260. REHABILITATION FURLOUGHS. The commissioner may
28 authorize a prisoner to participate in educational, training, medical,
29 psychiatric, or other rehabilitation programs approved by the commis-

1 sioner. Whe.. the prisoner is not participating in a rehabilitation pro-
2 gram, he shall be confined in the jail unless the commissioner directs
3 otherwise. If the prisoner violates the conditions established for his
4 conduct or custody, the commissioner may order the balance of the
5 prisoner's sentence to be spent in actual confinement. The wilful
6 failure of a prisoner to return to the place of confinement not later
7 than the expiration of any period during which he is authorized to be
8 away from the place of confinement under this section, is an unlawful
9 evasion under AS 11.30.093 [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS
10 PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE].
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Division of Corrections

Prosecution of Escapes referred to the District Attorney for the period 7-1-73 thru 10-19-75 (16 months).

Anchorage area (N=63)

Prosecute	25
No prosecute	16
Unknown	10
D.O.C. Internal	5
Pending	3
Detainer - Warrant	3
Refuse to Extradite	1

Fairbanks area (N=7)

Prosecute	1
No Prosecute	5
Not found	1

Southeast (N=7)

Prosecute	6
No Prosecute	1

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

Division of Corrections

JAY S. HAMMOND, GOVERNOR

Pouch H-03, Juneau 99811

March 19, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Document# Legislature,
General 14

Dear Mr. Gardiner:

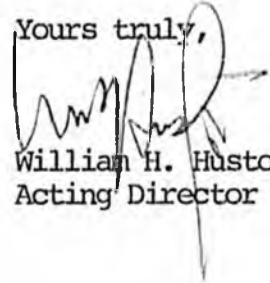
RE: H.B. 775

Attached you will find a summary by area of the disposition of escape cases which the Division of Corrections referred to the District Attorney's Office for the period 7-1-73 through 10-19-75. The data sources were not validated with District Attorney files so caution is advised in drawing more than the most general conclusions from the data.

Concerning the "No prosecution" cases, please be aware that the Division of Corrections will frequently recommend to the District Attorney that the matter be handled within Corrections. This phenomena is not reflected properly in the data presented as we do not make a point in our system of analyzing reasons prosecution was declined.

I hope this information is useful to your deliberations.

Yours truly,


William H. Huston
Acting Director

WHH/mmw

ATTACHMENT



"1776-A TRIBUTE FROM OUR STATE TO OUR NATION-1976"



3/19
Milton

Introduced: 2/13/76
Referred: Judiciary

1 IN THE HOUSE

BY COTTEN AND GARDINER

2 HOUSE BILL NO. 775

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal escapes from custody or
7 confinement."

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

9 * Section 1. AS 11.30.090 is amended to read:

10 Sec. 11.30.090. ESCAPE FROM CUSTODY OR CONFINEMENT. A person who
11 escapes or attempts to escape from the custody of a peace officer under
12 a lawful arrest or from a jail or institution in which he is detained by
13 a peace officer or confined by direction of a court in this state or
14 from custody under process issued by a court in this state is punish-
15 able,

16 (1) if the custody or confinement is by an arrest on a charge
17 of a felony, [OR CONVICTION OF A FELONY,] by a fine of not more than
18 \$5,000, or by imprisonment for not less than one year nor more than
19 three years, or by both; [OR]

20 (2) if the custody or confinement is for extradition, or by
21 an arrest, or charge of, or conviction of a misdemeanor, by a fine of
22 not more than \$1,000, or imprisonment for not more than one year, or by
23 both;

24 (3) if the custody or confinement is by a conviction of a
25 felony, by imprisonment for not less than one year nor more than ⁵three
26 years. Imposition ~~or suspension~~ of sentence shall not be suspended and
27 probation or parole shall not be granted until the minimum imprisonment
28 provided in this paragraph is served; or

29 (4) if the escape is by a prisoner exercising privileges

Make CS

1 under AS 33.30.150, 33.30.250 or 33.30.260, by imprisonment for not less
2 than ^{6 MOS.} ~~one year~~ nor more than ² ~~three~~ years. Imposition or execution of
3 sentence shall not be suspended and probation or parole shall not be
4 granted until the minimum imprisonment provided in this paragraph is
5 served.

6 * Sec. 2. AS 33.30.150 is amended to read:

7 Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with
8 good behavior serving a sentence of one year or more may be permitted as
9 a privilege and not as a right to visit with his family at a place other
10 than his place of confinement and at his own expense for a period not
11 exceeding one week nor more frequently than once each six months under
12 rules and regulations adopted by the commissioner and in his sole dis-
13 cretion. The wilful failure of a prisoner to return to the place of
14 confinement not later than the expiration of a period during which he is
15 authorized to be away from the place of confinement under this section,
16 is an escape from the place of confinement and is punishable under the
17 laws relating to escape.

The Alaska Statutes (Article 3, Sec. 33.30.250 and 33.30.260) require that when an offender fails to return from a work or rehabilitation furlough, he shall be reported and prosecuted as an escape. Alaska, therefore, counts as "escapes" many incidents which would not be so reported in other jurisdictions. This report thus includes, for example, walkaways from alcoholism and drug treatment programs, where the Division of Corrections is not necessarily advised that an "escape" has taken place. To the best of our knowledge, this is a complete accounting of all failures to return, as well as all bona fide escapes from Alaskan institutions during fiscal years 1974, 1975 and the first three and a half months of 1976.

During the period covered in the report, a number of changes have taken place in the structure of correctional services in the Anchorage area, which have undoubtedly contributed to the number of escapes. On January 1, 1973, the Division of Corrections took over operation of what had formerly been the city jail. With this event, the Division began, in effect, operating a city/county/state jail system in Anchorage, as it was already doing in other parts of the state. Facilities were ill-equipped to provide these services, and staff extremely limited. The opening of the Eagle River Correctional Center, scheduled for the winter of 1973-74, was delayed by inability to obtain furniture shipments, and the facility was opened in May of 1974. On July 1, 1974, the Division's separate Halfway House in Anchorage was closed for budgetary reasons, and limited funding was provided for remodeling of the first floor of the Third Avenue facility to be used as a halfway house. One dormitory was maintained as a medium-security area. Pipeline impact funding, made available in August, provided full coverage of one security post at Third Avenue, which meant that it was often operated with one staff member on duty, although the institution

was filling two functions. These changes thrust the task of housing maximum-security prisoners onto the newly opened Eagle River facility, which was unprepared for this task, since its staff had been trained for a minimum-to-medium security operation.

From July of 1974 on, the following procedure has been utilized for housing of Anchorage area offenders: they are housed at the Correctional Center Annex prior to sentencing; those who receive sentences of six months or less are housed either in the medium-security section of the Third Avenue facility or, if they are not considered to be escape risks, sent to the minimum-security institution at Palmer which provides an almost completely open atmosphere, with no fences or security mechanisms. Those receiving sentences of more than six months are sent to the maximum-security section of the Eagle River facility, where they are held for classification. At classification, they may be accepted into the Eagle River program, or may be sent to Palmer, Juneau, Fairbanks, Ketchikan, Nome, or to the Federal Bureau of Prisons. The latter choice is made under four possible conditions: (1) the offender presents a security or management problem which is not met by Alaskan facilities; (2) he needs special treatment programs which are not available in Alaskan facilities; (3) he is a federal prisoner (in which case he may be, but is not necessarily sent to a federal prison); or (4) he requests placement in a federal prison because of his parole plans.

The 1974 legislature passed a statute requiring that offenders serve one-third of sentence before being eligible for parole. The Division of Corrections administratively applied this ruling to eligibility for work release or furlough programs. However, the Superior Court of the First Judicial District overturned this ruling as it applies to educational and vocational training passes, striking down the one-third requirement.

It is within the context of the events which took place during this period that the following information must be evaluated.

Escapes and walkaways are, of course, in part determined by the size and security level of a facility, as well as its function. To aid the reader, Table 1 shows the state institutions, rank ordered from most secure (Juneau) to least secure (Community Programs), the average daily occupancy rate of each in FY 75, and mandays boarded in FY 75.

Table 1
Average Daily Population,
and Mandays Boarded, FY 1975

<u>Institution</u>	<u>Average Population</u>	<u>Mandays Boarded</u>
Juneau	63	22,995
Fairbanks	99	36,135
Annex	109	39,785
Ketchikan	21	7,665
Eagle River	61	22,265
Third Avenue	46	16,790
Palmer	49	17,885
Community Programs	13	4,745

Escapes:

Table 2 shows escapes from institutional supervision, presented, for convenience, by calendar year. The term "institutional supervision" includes escapes from inside the institutions, as well as escapes from supervised exercise yards or outside work crews, and other escapes from escorts. The institutions are, again, rank ordered from most to least secure in terms of their structure and programs.

Table 2
Escapes From
Institutional Supervision

<u>Institution</u>	<u>6 months CY 1973</u>	<u>CY 1974</u>	<u>10 1/2 months CY 1975</u>	<u>Total</u>
Juneau	2	0	0	2
Fairbanks	1	0	0	1
Annex	0	0	2	2
Ketchikan	4	0	0	4
Eagle River	N/A	5*	3	8
Third Avenue	0	5	1	6
Palmer	<u>2</u>	<u>1</u>	<u>7</u>	<u>10</u>
	9	11	13	33

Dec 6 1975
10
33

* includes 3 charged with attempted escape

Eighteen of the escapes (including three prosecuted as attempted escape) were from minimum-security facilities. Eleven were from medium-security conditions (including three from exercise yards), three were from escorts, and one was from the maximum-security unit at Eagle River, which has since adopted operational policies consistent with a maximum-security unit.

Thirty individuals accounted for the 33 escapes, with one individual escaping twice and another three times.

There were three incidents of triple escapes. In 1973, three inmates in Ketchikan overpowered a guard, locked him in a cell and escaped. In 1974, three inmates at Eagle River became involved with smuggled alcohol, and were charged with Attempted Escape. In 1975, three inmates at the Montana Creek Spike Camp smuggled alcohol into the Camp, overpowered a guard and escaped.

There were three double escapes; in 1973, two inmates escaped from Juneau by climbing the fence of the exercise yard. In a 1974 incident, two inmates of the Third Avenue facility escaped by sawing bars from a window, and lowering themselves to the ground by a rope made of sheets. In 1975 two inmates left the Eagle River facility and were apprehended within hours, outside an Anchorage Massage Parlor.

Of the 33 escapes, 21 were committed by felons, 6 by unsentenced individuals, 3 by misdemeanants, 2 by individuals whose sentence was described as "one year" (the cut-off point between felons and misdemeanants), and one by a man awaiting extradition to another state.

Of the 33 escapes, 21 involved no known new offenses while on escape status. Known offenses on escape status were: one robbery; one rape (accompanying charges of burglary and car theft were dropped); one burglary; one joyriding; one traffic offense, and one stolen boat. Pending charges are a probable first-degree murder, and two possible burglaries.

Sixteen escapes were apprehended within 24 hours, five by turning themselves in to authorities. Fifteen individuals were at large for periods ranging from one day to 60 days, an average of 11 days. Another left the state, and Alaskan officials were advised of his arrest 5 months later; one remains at large.

Walkaways:

Pre-release programs provide an incalculably important part of overall correctional programming. Among their major functions are:

- 1) They permit specialized treatment not available within the Alaskan correctional system, particularly for alcohol and drug problems;
- 2) They permit offenders to restore or maintain family ties;
- 3) Work programs enable offenders to support their families and themselves, and make them contributing members of society.
- 4) They permit vocational training not available in the institutions;
- 5) They provide a situation where offenders, correctional authorities and the Parole Board can observe the offender's readiness to return to society.

The major pre-release programs are:

- 1) Work release: When an offender is eligible for parole he may be classified for a work release program, which involves leaving an institution during working hours only.
- 2) Furlough programs: When eligible for parole, an offender may be furloughed to live outside the institution, for example, while participating in a training program such as the Seward Skill Center, or to work at a remote site. Supervision of furloughed offenders is provided jointly by the institution and the probation/parole office closest to the offender. Short furloughs may also be used for such purposes as seeking employment or family visitation.
- 3) Residential Treatment Programs: Residential treatment programs, most of which are community-operated, may be used at any appropriate time during an offender's sentence, but generally are utilized on a pre-release basis.

An offender may participate in any of these programs either on the recommendation of the Court, or through classification by correctional authorities.

Table 3 shows walkaways from unsupervised status on the various types of pre-release programs.

Table 3
Walkaways From
Pre-Release Programs

<u>Walkaways From Unsupervised Status</u>	<u>6 months CY 1973</u>	<u>CY 1974</u>	<u>10 1/2 months CY 1975</u>	<u>Total</u>
Work Release	0	7	8	15
Pass	0	0	2	2
Furlough	0	5	2	7
Community-operated Residential Programs	1	7	3	11
State-operated Residential - API	3	2	4	9
	4	21	19	44

Among the 44 walkaways, 16 were participating in court-recommended programs, and two were on recommendation of the Parole Board. Nine of the court recommendations and both the Parole Board recommendations were for residential treatment programs.

Table 4 shows type of pre-release program from which the walkaways occurred:

Table 4

Type of Pre-Release Program

	<u>Number</u>
Work Release	15
A.P.I.	9
Furlough	7
Family House	6
Church Pass	2
Future House	1
Social Development Center	1
Fairbanks Alcohol Program	1
Fairbanks Halfway House	1
Ketchikan Halfway House	1

The 44 walkaways were accounted for by 38 individuals; three individuals each walked away twice, and one left alcoholism programs four times (once after classification by Corrections, once after recommendation by the Parole Board, and twice after being recommended to the program by the Court).

Thirty walkaways were made by felons, four by unsentenced individuals, five by misdemeanants, and the remainder were "one year" or "unknown". Nine turned themselves in. The remainder were apprehended, four of them out of state.

The following new crimes were committed: one Burglary; one OMVI; one Felon in Possession of Firearm. The individual who had multiple walkaways accrued two counts of Hit and Run, two counts of Joyriding and three counts of Forgery while on walkaway status.

In two walkaways (both from API), Corrections was not notified of the event until after apprehension had taken place.