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COMMITTEE REPORT

HOUSE

1/25
file 1

(7)

FURTHER:

1/11/82

Date:

Jan. 25, 81

Mr. Speaker:

The Committee on JUDICIARY has had HB 633

"An Act prohibiting personal recognizance release when the offense charged is a violent crime."

under consideration and ~~(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)~~ reports it back with the following recommendations:

- do pass . [] do not pass
- [] do pass with attached amendments(s)
- [] replace with CS for _____ [] same title
[] new title
- and recommends _____
- [] AND attaches a "Letter of Intent" [] ~~New~~ Fiscal Note
- [] reports it back without recommendation
- [] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Charles Anderson

Patrick D. O'Connell

Mitton

Barnes

MEMBERS HAVING
OTHER RECOMMENDATIONS:

T. Buchholt No Rec

Freeman No Rec

Samuel Barnes
CHAIRMAN

The bill would prohibit the release of an individual on his own recognizance, if he was charged with certain violent crimes.

The bill does not prohibit pre-trial release. The individual could still be released on bail. The bill amounts to a legislative determination that the individual poses a danger to the community and should be subject to the statutes governing appearance bonds (bail) or other conditional releases.

The bill does not impinge on any constitutional rights. Article I, Section 11 of the Alaska Constitution speaks only in terms of "...the accused is entitled...to be released on bail, except for capital offenses when the proof is evident or the presumption great..."

Article I, Section 13 speaks in terms of "excessive bail"

Nor does the bill violate the rights of indigents. In Reeves v. State, 411 P2d 212, the Alaska Supreme Court held: "... that an indigent defendant does not have an absolute right to pretrial release on his own recognizance."

*Mark
Johnson
44942*

(1977), that one who is arrested and brought to jail for a minor offense for which bail has already been set in a bail schedule should be given a reasonable opportunity to post bail before being booked and searched, should normally be followed unless exigencies demand a different course of action, and that whether circumstances justify a variance will depend on the particular facts involved and must be determined in an adversary proceeding on a case-by-case basis.

Such released arrestee should not be subjected to booking procedures. — Where a jail had been provided with a bail schedule for petty offenses, the purpose of which was to afford an arrestee the opportunity to avoid incarceration by posting the established bail without need to appear before a magistrate, if one is arrested for a petty offense and has sufficient funds on his person to post the established bail when brought to the jail facility, he should be released immediately. There is no reason to subject

such an arrestee to booking procedures with the resultant inventory search of his person since he is not to be incarcerated. *Zehrunge v. State*, Sup. Ct. Op. No. 1501 (File No. 2823), 569 P.2d 189 (1977), modified on rehearing, 573 P.2d 858 (1978), wherein the supreme court held that its rule set forth in 569 P.2d 189 (1977), that one who is arrested and brought to jail for a minor offense for which bail has already been set in a bail schedule should be given a reasonable opportunity to post bail before being booked and searched, should normally be followed unless exigencies demand a different course of action, and that whether circumstances justify a variance will depend on the particular facts involved and must be determined in an adversary proceeding on a case-by-case basis.

As to lack of authority of trial courts to conduct in camera bail hearings, see note to AS 12.30.020. *Carman v. State*, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

Sec. 12.30.020. Release before trial. (a) A person charged with an offense shall, at his first appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community. If the offense with which a person is charged is a felony, or motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on his personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community.

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community, the judicial officer may

- (1) place the person in the custody of a designated person or organization agreeing to supervise him;
- (2) place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) require the person to return to custody after daylight hours on designated conditions;
- (4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 per cent of the amount of the bond; the

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Cross refer Section imp afforded by AS

deposit to be returned upon the performance of the condition of release;

(5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash; ~~or~~

(6) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community.

(c) In determining the conditions of release under (b) of this section, the judicial officer shall take into account

- (1) the nature and circumstances of the offense charged,
- (2) the weight of the evidence against the person,
- (3) the person's family ties,
- (4) the person's employment,
- (5) the person's financial resources,
- (6) the person's character and mental condition,
- (7) the length of the person's residence in the community,
- (8) the person's record of convictions,
- (9) the person's record of appearance at court proceedings,
- (10) the flight of the accused to avoid prosecution or his failure to appear at court proceedings.

(d) A judicial officer authorizing the release of a person under this section shall issue an order containing a statement of the conditions imposed.

(e) The judicial officer shall inform the person of the penalties which may be imposed for a violation of the conditions of his release and advise him that a warrant for his arrest will be issued immediately upon a violation.

(f) A person who remains in custody 48 hours after his appearance before a judicial officer because of his inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any other judicial officer in the district may review the conditions. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed.

(g) A judicial officer who orders the release of a person on a condition specified in (b) of this section may at any time amend his order to impose additional or different conditions of release, or to release the person under (a) of this section.

(h) Information offered or introduced at a hearing before a judicial officer to determine the conditions of release need not conform to the rules governing the admissibility of evidence in a court of law. (§ 1 ch 20 SLA 1966; am § 1, 2 ch 112 SLA 1967; am §§ 1, 2 ch 39 SLA 1974)

(i)

Cross reference. — See Cr. R. 41. this section and AS 12.30.010 were part of
 Section implements right to bail the Alaska Bail Reform Act, this section
 afforded by AS 12.30.010. — Since both must be taken to recognize and to

HB 633: prohibiting personal recognizance release when the offense charged is a violent crime

prohibits R.O.R. when the crime is:

- murder
- manslaughter
- negligent homicide
- assault
- kidnapping
- sexual assault
- robbery, first and second degree
- burglary, first degree
- arson, first degree
- escape, first degree
- riot

courts rarely give R.O.R. for these crimes now.

no personal recog / violent crime	HB 633
	by Anderson
1. write in weekly announcements for	
a. Monday hearing - not 5 days - + a Thurs. hearing	
2. votes	
3. amendments:	
4. attendance	
5. no fiscal note	
6. Anderson's bill. Violent crime is a house priority, but this bill isn't on the House priority list	
8. carrier	

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 633

Title "An Act prohibiting personal recognizance release when the offense charged is

Requested by Anderson Date 1/11/82 a violent crime

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services

Program Category Affected Offender Confinement, Reformation & Supervision

BRU, Program, Or Subprogram(s) Affected Adult Confinement

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

It is relatively uncommon for anyone to be granted R.O.R. release from pre-trial incarceration having been charged with those offenses listed in this bill. Thus the infrequency of such occurrences plus the normally short length of pre-trial detention seems to imply that any impact from this statute upon Corrections' bed space needs will be quite small.

IV. DATE 1-21-82

PREPARED BY

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Roger Lange

AGENCY

Division of Adult Corrections

PHONE

465-3375

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

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