

H B

2 4

Rule 41. Bail.

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.010—12.30.080.

(b) **Prosecuting Attorney — Appearance and Notice.** The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate, in his discretion, may require that notice of such proceedings be given the prosecuting attorney.

(c) **Surrender of Defendant.** At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender himself to the officer. There shall be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commitment and acknowledge the surrender by a written certificate.

(d) **Forfeiture.**

(1) **Declaration.** If the person released on bail on the giving or pledging of security fails to appear before a court or judicial officer as required, the judge or magistrate before whom the person released was to appear shall set a time for hearing to determine if the nonappearance was willful. Notice of the hearing shall be furnished and opportunity to be heard shall be granted to the prosecuting attorney, the defendant, the defense attorney, and the person giving or pledging the security. Nothing in this section shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) **Judgment of Forfeiture.** If after the hearing the judge or magistrate determines that the nonappearance of the person released on bail was willful, the security, given or pledged, shall be forfeited. An appeal may be taken of the judgment of forfeiture in the manner of other appeals.

(3) *Enforcement.* Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money. (Amended by Supreme Court Order 157 effective February 15, 1973)

Generally:

CROSS REFERENCES: Crim. Forms 55—59, 61—64, 66, 69—72

(a) **CROSS REFERENCES:** AS 12.30.010—AS 12.30.080 (as amended by c. 20 SLA 1966); Crim. Forms 53, 54

(c) **CROSS REFERENCES:** AS 12.30.020; Crim. Form 60

(d)(1) **CROSS REFERENCE:** Crim. Form 65

(d)(2) **CROSS REFERENCES:** Crim. Forms 67, 68

(2) *Setting Aside.* The court may direct that a forfeiture be set aside upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into an undertaking the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. The written undertaking shall provide for enforcement in accordance with this rule.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(k) *Exoneration.* When the condition of the undertaking or the deposit of cash made in lieu thereof has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the undertaking or by a timely surrender of the defendant into custody. When exoneration is ordered and bail released, any cash deposit made in lieu of an undertaking shall be returned to the owner thereof. Before exoneration is ordered or bail released, reasonable notice of the application for same shall be given to the district attorney or to his authorized representative.

(l) *Recommitment of Defendant—New Bail.*

(1) *Recommitment.* The superior court may order that a defendant previously admitted to bail be recommitted and placed in custody in either of the following instances:

[a] Where there is a breach of the condition of the undertaking or the deposit of cash made in lieu thereof.

[b] Where it appears to the court that any surety on the undertaking is dead or not qualified.

[c] At any time following the return of an indictment or information.

If the defendant is present in court when the order is made, he must be placed in custody at that time. If he is not present, a bench warrant shall be issued for his arrest.

(2) *New Bail.* Except where the breach consists of the defendant's failure to appear for judgment upon conviction, the court shall permit him to furnish new bail with different sureties or in an increased amount, as specified in the order.

RECOMMENDATIONS. THERE BEING NO OBJECTION, THE MOTION PASSED.

House Judiciary Committee 4/10/86 8:00AM

NUMBER 367

THE COMMITTEE DISCUSSED HB 644. REP. GRUENBERG MOVED THE 3/31/86 VERSION OF CSHB 644 FOR THE PURPOSE OF DISCUSSION. THERE WAS NO OBJECTION.

REP. GRUENBERG EXPLAINED THE BILL BRINGS ALASKA INTO CONFORMANCE WITH 42 OTHER STATES AND THE FEDERAL SYSTEM. CURRENTLY THERE IS NO PROVISION ALLOWING THE COURT TO RETURN ALL OR PART OF THE BAIL BACK TO THE BAILER, IF THE OFFENDER IS BROUGHT INTO COURT AFTER JUMPING BAIL. ALASKA'S STATUTE WAS ORIGINALLY DRAFTED BASED UPON THE FEDERAL RULE OF CRIMINAL PROCEDURE WHICH WAS SUBSEQUENTLY AMENDED TO ALLOW REMISSION OF BAIL. THIS BILL WAS INTRODUCED AT THE REQUEST OF BAIL BONDING COMPANIES. THE BILL AUTHORIZES THE BONDING COMPANY TO ARREST THE PERSON IF A CERTIFIED COPY OF THE ARREST WARRANT HAS BEEN OBTAINED. THE BOND COMPANY WOULD BE REQUIRED TO COMPLY WITH COURT ORDERS. THE BILL ALSO ALLOWS THE BOND COMPANY TO APPLY FOR REMISSION OF BAIL.

NUMBER 427

REP. CLOCKSIN ASKED HOW THE MIRANDA RIGHTS APPLY TO A BAIL BONDSMAN. REP. TAYLOR ANSWERED IF THE BAIL BONDSMAN ATTEMPTS TO USE ANYTHING SAID BY THE OFFENDER IN COURT, THE BAIL BONDSMAN CANNOT APPLY FOR REMISSION OF BAIL.

NUMBER 434

REP. GRUENBERG REFERRED TO AN 1810 U.S. SUPREME COURT DECISION WHICH STATED THE DEFENDANT AND THE BAIL BONDER HAVE A CONTRACTUAL RELATIONSHIP WHICH CONTAINS NO CONSTITUTIONAL PROTECTIONS.

NUMBER 426

REP. CLOCKSIN ASKED FOR A LEGAL OPINION ON DUE PROCESS RIGHTS IN THIS SITUATION.

NUMBER 460

REP. PETTYJOHN ASKED FOR CLARIFICATION OF SECTION (C). REP. GRUENBERG EXPLAINED THE PROCEDURE. IF THE DEFENDANT DOES NOT SHOW UP FOR TRIAL A NOTICE OF HEARING AND ARREST WARRANT ARE ISSUED. THE HEARING DETERMINES WHETHER THE ORIGINAL ORDER FOR THE HEARING WAS VALID, AND WHETHER THE PERSON HAS NOT APPEARED. A JUDGEMENT OF FORFEITURE IS GRANTED IF THE COURT FINDS THOSE TWO FACTS. THE BILL WOULD APPLY IF THE DEFENDANT IS BROUGHT IN BETWEEN THE ORIGINAL NOTICE AND THE HEARING.

CHAIRMAN MILLER NOTED HB 644 WOULD BE HELD OVER UNTIL A LEGAL OPINION OF THE MIRANDA RIGHTS QUESTION COULD BE OBTAINED.

NUMBER 525

CHAIRMAN MILLER ASKED IF A PRIVATE CITIZEN HAS TO READ THE DEFENDANT'S RIGHTS WHEN MAKING AN ARREST. REP. CLOCKSIN ANSWERED NO.

House Judiciary Committee Meeting
4/30/86 1:30 P.M.

REPRESENTATIVE CLOCKSIN EXCUSED HIMSELF TO GO TO A DOCTOR'S APPOINTMENT AT 2:15.

NUMBER 125

CHAIR MILLER ANNOUNCED THAT THE COMMITTEE WOULD TAKE UP HB 644 NEXT, BUT WOULD STAND AT RECESS UNTIL REPRESENTATIVE GRUENBERG, THE PRIME SPONSOR, ARRIVED, AS HE WAS NEEDED BOTH FOR AN EXPLANATION OF THE BILL AND A QUORUM.

DUE TO TAPE MALFUNCTION --- TAPE BROKE, THE REMAINDER OF THE MEETING IS NOT RECORDED.

REPRESENTATIVE GRUENBERG ARRIVED AND THE MEETING WAS CALLED BACK TO ORDER.

A MOTION TO ADOPT COMMITTEE SUBSTITUTE TO HB 644 WAS MADE. THERE WERE NO OBJECTIONS SO THE CS WAS ADOPTED.

A MOTION TO MOVE CSHB 644, JUDICIARY, OUT OF COMMITTEE, WITH INDIVIDUAL RECOMMENDATIONS. THERE WERE NO OBJECTIONS SO CSHB WAS MOVED OUT.

THE MEETING WAS ADJOURNED AT 2:20 P.M.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

DATE	PAGE	ACTION
02/17/85 (H)	2148	READ THE FIRST TIME - REFERRAL(S) STATE AFFAIRS JUDICIARY FINANCE RULES

HB 643

AN ACT RELATING TO CORPORATIONS.

PRIME SPONSOR: GP' IRG BY REQ
CO-SPONSORS:

CURRENT STATUS:) JUD

DATE	PAGE	ACTION
02/17/86 (H)	2149	READ THE FIRST TIME - REFERRAL(S)
02/26/86 (H)	2237	L&C REFERRAL WAIVED JUDICIARY RULES

HB 644

AN ACT RELATING TO ARREST BY A SURETY AND REMISSION OF BAIL.

PRIME SPONSOR: GRUENBERG
CO-SPONSORS: BOUCHER

CURRENT STATUS: (H) FIN

DATE	PAGE	ACTION
02/17/86 (H)	2149	READ THE FIRST TIME - REFERRAL(S)
05/01/86 (H)	3038	JUD RPT 5DP
05/01/86 (H)	3038	ZERO FIS'L NOTE FINANCE RULES

HB 645

AN ACT RELATING TO PREVAILING WAGES FOR PUBLIC CONSTRUCTION CONTRACTS; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: HERRMANN
CO-SPONSORS: WALLIS

CURRENT STATUS: (H) SA

DATE	PAGE	ACTION
02/17/86 (H)	2149	READ THE FIRST TIME - REFERRAL(S) STATE AFFAIRS JUDICIARY FINANCE RULES

HB 646

AN ACT RELATING TO NONGAME, WILDLIFE AND NONCONSUMPTIVE USE OF WILDLIFE.

PRIME SPONSOR: MILLER.MM
CO-SPONSORS:

CURRENT STATUS: (H) RES

Original sponsors: Gruenberg and Boucher

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 644 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to arrest by a surety and remission
7 of bail."

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

9 * Section 1. AS 12.30.060 is amended by adding new subsections to read:

10 (b) If a person released under the provisions of this chapter
11 fails to appear before a court as required or violates the conditions
12 of release, upon the issuance of an arrest warrant by the judge or
13 magistrate, the surety or its agent may arrest the person and deliver
14 the person to a peace officer along with a certified copy of the war-
15 rant. This section does not limit a peace officer's power to arrest.

16 (c) After entry of a judgment of forfeiture, the surety may
17 apply to the court for a remission. If it appears that justice does
18 not require the forfeiture, the court may grant the application and
19 remit forfeiture, in whole or in part, upon conditions that the court
20 may impose. The conditions may include payment of the expenses in-
21 curred in the proceedings for the enforcement of the forfeiture and in
22 securing the return of the defendant.
23
24
25
26
27
28
29

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H JUD	1-28-87	1:30 p.m.
H JUD	1-29-87	1:30 p.m.

(b) After entry of a judgment of forfeiture, the surety may apply to the court for a remission. The court may grant the application and remit forfeiture, in whole or in part, if the defendant subsequently appears before the court, and in other cases if it appears that justice does not require the forfeiture.

BILL NO: HB24

DATE: 2/11/87

TITLE: "An Act relating to remission after forfeiture of bail."

CONTACT: Maj. Walter J. Gilmour
Acting Director
269-5641

DEPARTMENT OF
PUBLIC SAFETY

POSTMASTER /

The Division of Alaska State Troopers' position is neutral on this legislation.

This legislation would permit the return of bail to a surety following a forfeiture of bail for some action of a defendant, but also require the surety to pay for expenses entailed in returning the defendant to the court.

The basic purpose of bail is to deter a non-appearance of the defendant. Passage of this legislation may help bail bondsmen in cases where they are not at fault for a defendant's flight.

William R. Nix

William R. Nix
Acting Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 24
Publish Date: _____

REQUEST
Revision Date: _____
Title: "An Act relating to remission
after forfeiture of bail."
Sponsor: Rep. Boucher
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments and C.I.B.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 1/26/87

Approved by Commissioner: William R. Dix *[Signature]*
Agency: Public Safety

Date: 1/27/87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

JWR
1/27/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2/6/87

REQUEST

Bill/Resolution No. : CSHB 24 (Judiciary)
 Title : Relating to remission after forfeiture of bail

Sponsor : Reps. Boucher & Gruenberg
 Requestor : House Judiciary Committee
 Date of Request : 1/30/87

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
----------------	---	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The Alaska Supreme Court has held that the superior court has discretion to order remission of a forfeited bond (Adkerson v. State, No. 3153, 2/6/87). Since it is now established that the courts have inherent authority to take the action authorized by this bill, there is no fiscal impact attributable to the bill.

Prepared by : Karla Forsythe Phone : 264-8228
 Division : General Counsel, Alaska Court System Date : 2/6/87

Approved by Commissioner : Stephanie Gale for Art Snowden Date : 2-6-87
 Agency : Alaska Court System

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Introduced: 1/19/87
Referred: Judiciary

1 IN THE HOUSE

BY BOUCHER AND GRUENBERG

2

HOUSE BILL NO. 24

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to remission after forfeiture of
7 bail."

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

9 * Section 1. AS 12.30.060 is amended by adding a new subsection to
10 read:

subsequently surrendered.

11 (b) After entry of a judgment of forfeiture, the surety may
12 apply to the court for a remission. If it appears that justice does
13 not require the forfeiture, the court may grant the application and
14 remit forfeiture, in whole or in part. The court may impose condi-
15 tions of remission, including payment of the expenses incurred in the
16 proceedings for the enforcement of the forfeiture and in securing the
17 return of the defendant.

if the S has been apprehended and returned or physically cannot be returned because of death or incarceration in another jurisdiction

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3718
465-4968/4986

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

DATE: January 27, 1987

TO: Members of the House Judiciary Committee

FROM: Max F. Gruenberg, Jr. *MFG*

RE: HB 24: "An Act relating to remission after forfeiture of bail "

HB 24 will allow the court to "remit" bail. "Bail remission" is a legal term meaning that the court can order a return of all or part of the bail if the offender is brought into court after jumping bail and forfeiting the bond. Without bail remission the bail bondsman has no incentive to apprehend the fleeing felon. Bail remission has resulted in the capture of many bail jumpers.

The bill will bring Alaska into conformance with at least forty-two other states and the federal system. Alaska Rule of Criminal Procedure 41 originally explicitly provided for the remission of bail. In 1973 the Alaska Supreme Court amended the rule to conform to the federal rule. The federal rule at the time did not provide for bail remission, but was subsequently amended to do so. Alaska has not updated its rule and now is in the strange position of being one of the few states (possibly the only state) to prohibit remission of bail after having at one time allowed bail to be remitted.

HB 24 is the same as HB 644, which passed out of the House Judiciary Committee last session, except that I have deleted the first section of HB 644, because it could have created problems. I also reworded some of the language in the bill for the purpose of clarity.

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

FISCAL DETAIL

Bill/Resolution No.: HB 24
 Title: Relating to remission
after forfeiture of bail

Agency Affected: Alaska Court System
 BRU: Trial Courts

Sponsor: Reps. Boucher & Gruenberg
 Requestor: House Judiciary Committee
 Date of Request: 1/22/87

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
----------------	---	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

It is anticipated that workload and revenue impact will be minimal.

Prepared by: Karla Forsythe
 Division: General Counsel, Alaska Court System

Phone: 264-8228
 Date: 1/26/87

Approved by Commissioner: Stephanie Cole, Not Art Andersen
 Agency: Alaska Court System

Date: 1-27-87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)