

HB 1442

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 1, 1991

FURTHER REFERRALS:

Date of Committee Action: 3/13/91

The FINANCE Committee considered:

HB 142

HOUSE BILL NO. 142

CRIME OF ESCAPE

"An Act relating to the crime of escape and the definition of official detention for the purposes of the criminal code and provisions governing prison facilities and prisoners."

- RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title
 [] have attached amendments(s)
 [X] do pass
 [] do not pass
 [] no recommendations
 [] individual recommendations
 [] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) _____
 [] fiscal impact _____
 [] zero fiscal note _____

- APPROVES PREVIOUS: (Dept/Date) _____
 [] fiscal note(s) _____
 [X] zero fiscal note(s) LAW 2/25/91
PUB SAFETY 2/25/91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>					
<i>[Signature]</i>		<i>[Signature]</i>		✓	
<i>[Signature]</i>		<i>[Signature]</i>		✓	
<i>[Signature]</i>		<i>[Signature]</i>			
<i>[Signature]</i>		<i>[Signature]</i>			
<i>[Signature]</i>	X	<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	

[Signature]
 CHAIRMAN'S SIGNATURE

HOUSE BILL NO. 142
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 2/19/91

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of escape and the definition of 'official detention' for the
2 purposes of the criminal code and provisions governing prison facilities and prisoners."

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

4 * Section 1. PURPOSE. It is the purpose of this Act to reverse the effect of the decisions of the
5 Alaska Court of Appeals in Jacobson v. State, 786 P.2d 388 (Alaska App. 1990), and Hubbard v. State,
6 800 P.2d 952 (Alaska App. 1990).

7 * Sec. 2. AS 11.56.330(a) is amended to read:

8 (a) One commits the crime of escape in the fourth degree if, without lawful authority,

9 one

10 (1) removes oneself from official detention for a misdemeanor; or

11 (2) having been placed under actual restraint by a peace officer before arrest,

12 removes oneself from the restraint.

13 * Sec. 3. AS 11.81.900(b)(34) is amended to read:

14 (34) "official detention" means custody, arrest, surrender in lieu of arrest, or

- 1 actual or constructive restraint [CONFINEMENT] under an order of a court in a criminal or
- 2 juvenile proceeding, other than an order of conditional bail release;

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
Bill version HB 142
(H) Publish Date: 3/1/91

Revision Date: _____
Title: An Act Relating to the Crime
of Escape
Sponsor: House Judiciary
Requestor: House Judiciary

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No distinct fiscal impact upon the AST is expected.

Prepared by: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 2/25/91
 Approved by Commissioner: *Gayle Horetski* Richard L. Burton
 Agency: Department of Public Safety Date: 2/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 2

Bill Version: HB 142

(H) Publish Date: 3/1/91

Revision Date: _____

Department Affected: _____

Title: "An Act relating to the crime
of escape..."

BRU: Prosecution

Component: Criminal Justice Litigation

Sponsor: House Judiciary

Requestor: House Judiciary

COMPONENT SERIAL NO.

			8	9
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: February 25, 1991

Approved by Commissioner: _____

Richard I. Pegues
Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 25, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 142

This bill reverses the effects of two recent Alaska Court of Appeals' decisions, in Jacobson v. State and Hubbard v. State, concerning the crime of escape and the definition of official detention.

First, AS 11.56.330(a) is amended to clarify that one commits the crime of escape in the fourth degree if, without lawful authority, having been placed under actual restraint by a peace officer before arrest, one removes oneself from the restraint.

Second, AS 11.81.900(b)(34) is amended to include actual or constructive restraint under an order of the court within the definition of official detention.

These amendments will not have a fiscal impact on the Department of Law because they are consistent with the law as it was interpreted prior to the recent decisions of the Court of Appeals.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE


P.O. BOX V, JUNEAU 99811

(907) 465-3892



M E M O R A N D U M

TO: Representative Eileen MacLean, Co-Chair
Representative Mike Navarre, Co-Chair
Finance Committee

FROM: Representative Dave Donley, Chair 

RE: HB 142 - Crime of Escape

DATE: February 27, 1991

I would greatly appreciate if HB 142 could be scheduled for a finance committee hearing. The bill reverses the effects of two recent Alaska court of appeals' decisions relating to the crime of escape by closing two loopholes in existing law.

In the first case, Jacobson v. State, 786 P.2d 388 (Alaska App. 1990), the defendant escaped the scene of a crime after having been handcuffed by a police officer, but before being arrested on a specific charge. The court of appeals reversed the defendant's conviction, and held that the statute only allows escape charges to be brought after a defendant has been formally arrested on a specific charge. Section 2 of the bill closes this loophole by making it a crime to, having been placed under actual restraint by a peace officer before arrest, remove oneself from the restraint.

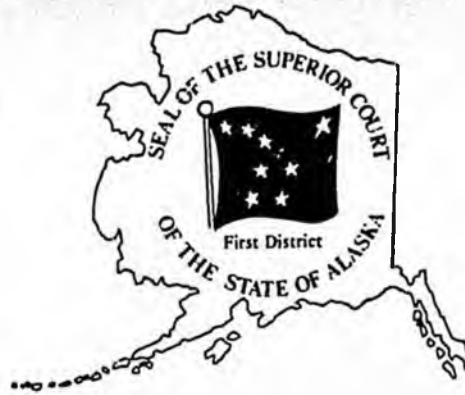
In the second case, Hubbard v. State, 800 P.2d 952 (Alaska App. 1990), the defendant was in court on a bail hearing, having been previously released on a theft charge. The judge ordered the defendant into custody but, before an officer could physically restrain the defendant, he fled the courtroom. The court of appeals held that the defendant could not be charged with a crime under these circumstances because there was no indication of any legislative intent to prohibit the conduct. Section 3 of the bill closes this loophole by including constructive restraint under an order of the court within the definition of official detention.

Thank you in advance for your help in scheduling this bill.

DD:lho

ANCHORAGE OFFICE

3111 "C" STREET, SUITE 450 • ANCHORAGE, ALASKA 99503 • (907) 561-7629



Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT

DIMOND COURTHOUSE, BOX U
JUNEAU, ALASKA
99811-4100

Chambers of
Walter L. Carpeneti, Judge

(907) 463-4741

January 25, 1991

Honorable Fran Ulmer
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Re: Draft legislation concerning
escape

Dear Representative Ulmer:

Thank you for your letter of January 23, 1991, received here yesterday, concerning draft legislation addressing the opinions of the court of appeals in the Jacobson and Hubbard cases. You asked for my opinion or comments.

First, I believe that the proposed legislation clearly defines as criminal the conduct in question, and in that regard addresses the concerns raised by those two cases.

Second, note that the proposed changes would make the defendant's actions in Jacobson prosecutable as a misdemeanor, but not a felony. (I make this observation because the defendant's conduct in Jacobson arguably was felonious, although, of course, the court of appeals ruled that there was no violation of the statute.) It is a legislative decision as to whether the conduct should be a misdemeanor or a felony, but I wanted to make sure that you were aware that the draft provided that removing oneself from restraint placed by a peace officer prior to arrest would be only a misdemeanor, even if the person had been placed under restraint for a felony.

re
HB142

January 25, 1991

On January 17th I received from you a note regarding House Bill No. 21 and your requests for comments. I would make the following general observations:

1. The proposed legislation does not address at all the problem raised in the Jacobson and Hubbard cases. That is, it does not change or clarify the definition of "official detention".

2. The proposed legislation basically has the effect of creating a felony when one escapes from official detention for a misdemeanor (or from official detention in connection with a valid warrant), and during the escape takes a police vehicle or an emergency medical vehicle. That seems to me to be a policy decision for the legislature, and I do not believe that I can offer too much which would be helpful to that policy determination.

I hope these comments are helpful to you. Thank you for offering me the chance to comment. Please do not hesitate to contact me if you have any other questions.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

Re: HB 21
Rep.
Barnes
bill on
stealing
police
cars



Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT

DIMOND COURTHOUSE, BOX U
JUNEAU, ALASKA
99811-4100

Chambers of
Walter L. Carpenelli, Judge

(907) 463-4741

December 6, 1990
(dictated 12/5/90)

Honorable Fran Ulmer
Alaska House of
Representatives
P.O. Box V
Juneau, AK 99811

Dear Fran:

Enclosed please find copies of the two cases which I mentioned to you during your visit yesterday.

Simply put, I cannot believe that the legislature would not have intended that the conduct of the defendants in these cases be prosecutable as escape. Mr. Jacobson was apprehended by a police officer under extremely suspicious circumstances in a darkened building after the officer had received a report of a burglary in progress. He ran from the officer when he realized, on a darkened stairway, that he was speaking to an officer of the law and not to a confederate. He was caught by the officer some hundred yards or so from the building. He feigned illness in an attempt to break away, which was momentarily successful, until tackled by the officer again. Brought back to the building by the officer, he was placed in handcuffs, which handcuffs were run around a post so as to secure Mr. Jacobson to the post. The officer left him under the guard of an armed officer. By tricking the officer and by pulling one hand through the handcuff, Mr. Jacobson was able to escape from the police. He was again caught, this time about 20 minutes later.

The narrow question in Jacobson was whether the defendant was "under official detention for a felony" when he fled. The legislature defined official detention to include "custody,

arrest, surrender in lieu of arrest, or confinement under an order of a court." I think it is clear that Mr. Jacobson was in custody. The court of appeals held that he was not. Its reasons are set out on page 393. They are wholly unpersuasive to me. (Briefly, it makes no sense to categorize these definitional terms according to whether they describe continuing circumstances or those which are fixed in time, and it does violence to legislative intent to effectively interpret away a term.) More importantly, I simply cannot believe that the legislature intended the kinds of distinctions found at page 393 when it passed this statute.

The Hubbard case is even more baffling. There, the defendant, in a courtroom, was ordered by a judge to remain in the courtroom while a bail hearing was set on. The defendant had previously been arrested, was out on release, had allegedly violated the conditions of release, and was released again. While the defendant was subsequently in court, the judge said "Mr. Hubbard will be remanded", which I take to mean that he would be remanded to custody while a bail hearing was scheduled. The judge requested the defendant to take a seat in the jury box, and he instead left the courtroom, ignoring a further call by the judge to remain.

Without sounding like a broken record, I simply cannot believe that the legislature, when it defined "official detention" as including "custody" (as well as "arrest, surrender in lieu of arrest, or confinement under an order of a court") did not intend that a person in Mr. Hubbard's situation be considered as being in custody.

In defense of the court of appeals, I believe that it is concerned about the policy implications of contrary decisions in these cases. The Jacobson court says as much at the top of the right-hand column on page 393. With due respect to the court, however, I believe it is for the legislature to weigh and then make those policy decisions, and for the courts to effectuate those decisions (short of a constitutional violation, which no one has argued here).

Honorable Fran Ulmer

Page Three

December 6, 1990
(dictated 12/5/90)

I hope this information is helpful to you. I would be happy to discuss it further with you.

Sincerely,

Bud Carpeneti

Walter L. Carpeneti

Enclosures

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

January 18, 1991

The Honorable Fran Ulmer
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

Last week, your legislative assistant, Margaret Pugh, asked that we provide assistance in drafting a bill relating to the crime of escape. In particular, she indicated that you are interested in responding to the court of appeals opinions in Jacobson v. State, 786 P.2d 388 (Alaska App. 1990), and Hubbard v. State, ___ P.2d ___ (Alaska App. 1990) (Op. No. 1092).

In Jacobson, the defendant escaped the scene of a crime after having been handcuffed by a police officer, but before being arrested on a specific charge. The court of appeals reversed the defendant's subsequent conviction for escape, holding that the crime of escape as set out in AS 11.56.310 cannot be committed unless and until the defendant has been arrested on an identified charge. 786 P.2d at 393.

In Hubbard, the defendant was in court on a bail hearing, having been previously released on a theft charge. The superior court ordered the defendant remanded to custody but, before an officer could physically restrain the defendant, the defendant fled the courtroom. The court of appeals held that the defendant could not be charged with the crime of escape under these circumstances because he had not "been physically placed under arrest" at the time he fled. Op. No. 1092 at 7. The court noted "no indication of any legislative intent to adopt a doctrine of constructive restraint." Id.

Attached, please find a draft bill containing two sections. Section 1 amends AS 11.56.330 by adding a subsection that makes it the misdemeanor offense of escape in the fourth degree for a person who has been placed under actual restraint by an officer to remove himself or herself from that restraint without lawful authority. Section 2 amends the definition of "official detention" to include "actual or constructive restraint" under a court order. These two provisions will close the loopholes created by Hubbard and Jacobson by providing criminal sanctions, first,

The Honorable Fran Ulmer

January 18, 1991

Page 2

when a person flees after having been handcuffed or otherwise physically restrained by a peace officer, even if the person has not been charged with a crime yet, and, second, when a person flees the courtroom after having been ordered into custody by a judge.

If you have any questions, or if I have misinterpreted your request, I would be happy to discuss the matter with you further. Also, we would very much appreciate the opportunity to review any work draft of the bill prepared by legal services.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot Q. Knuth

Margot Q. Knuth
Assistant Attorney General

MOK:me-009

1/15/91

D R A F T---ESCAPE

For an Act entitled: "An Act relating to the crime of escape."

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

* Section 1. AS 11.56.330 is amended to read:

Sec. 11.56.330. ESCAPE IN THE FOURTH DEGREE. (a) One commits the crime of escape in the fourth degree if, without lawful authority, one

(1) removes oneself from official detention for a misdemeanor; or

(2) having been placed under actual restraint by a peace officer prior to arrest, one removes oneself from the restraint.

(b) Escape in the fourth degree is a class A misdemeanor.

* Sec. 2. AS 11.81.900(b)(34) is amended to read:

(34) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint [CONFINEMENT] under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

PLEASE MICROFILM TOP PAGE ONLY

DOCUMENTS WHICH HAVE NOT BEEN
FILMED BUT ARE AVAILABLE IN THE
ORIGINAL FILE INCLUDE:

→ Copy of "Pacific Reporter" re:
David W. Jacobson v. State of Alaska
→ Copy of Court document re:
Christopher Hubbard v. State of Alaska