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HOUSE COMMITTEE REPORT

(7)

Date Referred: January 10, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-31-94

The JUDICIARY Committee considered:

HB 313

HOUSE BILL NO. 313

SUSPENDED IMPOSITION OF SENTENCES

"An Act relating to suspended imposition of criminal sentences and to the period in which suspension of the imposition of sentence for conviction of the crime of disorderly conduct may be authorized."

RECOMMENDATIONS:

be replaced with CS HB 313 (JUD) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____ fiscal note(s) _____

zero fiscal note at sust. corr., law, pub def, pub sh. zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Peter East</i>	✓	<i>Joseph P. ...</i>			✓
<i>Brian D. Porter</i>	✓	<i>Robert Phillips</i>			✓
<i>Don ...</i>	✓	<i>...</i>			✓

Brian D. Porter
CHAIRMAN'S SIGNATURE

8-LS1174K ✓
Chenoweth
1/28/94

CS FOR HOUSE BILL NO. 313()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to suspended imposition of criminal sentences and to the
2 imposition of sentence when a suspended imposition of sentence is revoked."

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

4 * Section 1. AS 12.55.085(a) is amended to read:

5 (a) Except as provided in (f) of this section, if it appears that there are
6 circumstances in mitigation of the punishment, or that the ends of justice will be
7 served, the court may, in its discretion, suspend the imposition of sentence and may
8 direct that the suspension continue for a period of time, not exceeding the maximum
9 term of sentence that may be imposed or a period of one year, whichever is greater,
10 and upon the terms and conditions that the court determines, and shall place the person
11 on probation, under the charge and supervision of the probation officer of the court
12 during the suspension.

13 * Sec. 2. AS 12.55.085(c) is amended to read:

14 (c) Upon the revocation and termination of the probation, the court may



1 pronounce sentence at any time within the maximum probation period authorized
2 by this section [AFTER THE SUSPENSION OF THE SENTENCE WITHIN THE
3 LONGEST PERIOD FOR WHICH THE DEFENDANT MIGHT HAVE BEEN
4 SENTENCED], subject to the limitation specified in AS 12.55.086(c).

5 * Sec. 3. APPLICABILITY. The amendments to AS 12.55.085(a) and (c) made by this
6 Act apply to suspensions of imposition of criminal sentences that are imposed for offenses that
7 are committed on or after the effective date of this Act.

Alaska State Legislature
House of Representatives

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EAGLE RIVER, AK 99577
PHONE (907) 694-8944
FAX 694-8945

SESSION:
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JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

January 28, 1994

The Honorable Representative Brian Porter
Chairman
House Judiciary Committee

Re: HB 313

Please find attached hereto the following:

- (1) CS HB 313();
- (2) Sponsor Statement for CS HB 313();
- (3) Sectional Analysis for CS HB 313().

It is my intent to urge adoption of CS HB 313() by the Judiciary Committee.

Because of time constraints, new fiscal notes have not been ordered with respect to the proposed committee substitute. However, due to the nature of the change, I do not anticipate that any of the affected agencies will modify the notes already provided to the committee with respect to the original bill. Should the committee adopt the proposed committee substitute, I will ensure that new fiscal notes are ordered.

Staff Counsel for the Judiciary Committee suggested that it would be helpful to the Committee to submit a list of Class B misdemeanors. In compliance with this suggestion, I have appended to the end of my Sponsor Statement a list of such crimes. This list should not be viewed as exhaustive.

Thank you for your prompt consideration of this matter. Please feel free to contact my office at any time should there be any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Kott".

Pete Kott
District 24



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House of Representatives

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Representative Pete Kott

SPONSOR STATEMENT
CS FOR HOUSE BILL NO. 313()

In criminal cases, when a person is convicted of a crime and there are circumstances in mitigation of punishment, or when justice would be promoted, the court has the option of suspending imposition of sentence. When this occurs, no sentence is imposed. Instead, the defendant is placed on probation for a period of time, subject to reasonable conditions. If the defendant does not comply with the conditions of probation, the Court has the option of revoking probation and imposing sentence. If probation conditions are satisfied, sentence is never imposed and at the end of the probationary period the underlying judgment is vacated.

Under existing law, the probationary period available to a court when suspending imposition of sentence can not exceed the amount of time the defendant could be sentenced to jail. For example, Class A misdemeanors carry a potential of up to a year in jail. Accordingly, suspended imposition of sentences in cases involving class A misdemeanors could involve probationary periods of up to a year. This limitation of probationary periods is reasonable in almost all classes of offenses.

The crime of disorderly conduct, however, poses a problem. This is because it carries a potential jail term of only 10 days. What this means is that the court, when suspending imposition of sentence, is limited to a probationary period of but 10 days, which is meaningless. Disorderly Conduct is a Class B misdemeanor. Other Class B misdemeanors carry a potential jail term of but 90 days, which means that probation when imposition of sentence is suspended is limited to only 90 days. Depending on the circumstances, even 90 days may not be sufficient.

Disorderly Conduct and other Class B misdemeanors are very minor offenses, often involving youthful, first-time offenders. These offenders are the very people for whom the suspended imposition of sentence statute was intended. It therefore is desirable to have suspended imposition of sentence available in Disorderly Conduct



and other Class B misdemeanor cases. However, it also is desirable to permit the court to impose a reasonable period of probation. Ten days in Disorderly Conduct cases is just not long enough to have any meaningful effect on rehabilitation or for monitoring the defendant's behavior. Similarly, 90 days probation in other Class B misdemeanor cases, depending on circumstances, may be too short a period.

CS HB 313() cures this problem by permitting probation of up to one year when suspending imposition of sentence in all Class B misdemeanor cases, including Disorderly Conduct cases. This period is not mandatory. Sentencing judges retain the discretion to impose a shorter period where warranted. However, CS HB 313 () grants sentencing judges the flexibility of imposing probation of up to a year when suspending imposition of sentence in Class B misdemeanor cases if they deem it advisable. No other substantive changes are made in the law.

This bill, as discussed above, affects only the permissible probationary period when suspending imposition of sentence in Class B misdemeanor cases. Class B misdemeanors are the least serious criminal offenses in the State of Alaska. A non-exhaustive sample of Class B misdemeanors includes the following: Theft in the Fourth Degree (AS 11.46.150); Criminal Trespass in the Second Degree (AS 11.46.330); Disregard of a Highway Obstruction (AS 11.46.460); Criminal Mischief in the Fourth Degree (AS 11.46.486); Impersonating a Public Servant (AS 11.56.830); Disorderly Conduct (AS 11.61.110); Harassment (AS 11.61.120); Obstruction of Highway (AS 11.61.150); Misconduct Involving Weapons in the Fifth Degree (AS 11.61.220); and, Misconduct Involving Controlled Substance in the Sixth Degree (AS 11.71.060). As indicated, this list is not exhaustive.

Alaska State Legislature
House of Representatives

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Representative Pete Kott

SECTIONAL ANALYSIS
CS HB 313()

Section 1:

This section of CS HB 313() amends AS 12.55.085(a) to permit judicial officers to suspend imposition of sentence in criminal cases for the maximum period of time that incarceration could be ordered or for a period of one year, whichever is greater. Before this change, criminal defendants could receive suspended imposition of sentences only up to the maximum period of time they could be sentenced to imprisonment.

Section 2:

This section is an amendment conforming AS 12.55.085(c) to the change made in Section 1 of this bill, thus permitting the Court to revoke probation and impose sentence during the entire period of probation ordered concomitantly with a suspended imposition of sentence.

Section 3:

This section makes it clear that the above discussed amendments apply only to crimes committed on or after the effective date of the Act.



SECTIONAL ANALYSIS



FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 313

Revision Date: _____
Title: 'An Act relating to suspend imposition
of criminal sentences . . .
Sponsor: Rep. Kott
Requestor: (H) Jud.

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: _____

Approved by Commissioner: Nancy Bear Usora
Agency: Department of Administration

Date: 1/18/94

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STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE
BILL NO.

HB 313

Revision Date: _____ Dept. Affected: Corrections
 Title: SIS for Disorderly Conduct BRU: Statewide Operations
 Component: All Regional Probation Offices
 Sponsor: Rep. Kott
 Requestor: Rep. Kott COMPONENT SERIAL NO. 710, 723, 727

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS:	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ 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

ANALYSIS: (Attach a separate page if necessary)
 Probation Officers do not supervise misdemeanants. Any change in length of SIS for a misdemeanor would have no impact on the department's regional probation offices.

Prepared By: Diane Schenker, Special Assistant Phone: 465-3315/561-4426
 Division: Office of the Commissioner Date: 1/12/94
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 1-18-94
 Agency: Department of Corrections

PREPARER TO PRO

LEGISLATIVE OFFICE.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 313

Revision Date: _____
 Title: "An Act relating to suspended imposition
of criminal sentences . . ."
 Sponsor: Rep. Kolt
 Requestor: (H) Jud.

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES: ()	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Director
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usera
 Agency: Department of Administration

Date: 1/18/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB 313

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act relating to suspension of imposition
of criminal sentences." BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Kott
 Requestor: H. JUD COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: (907) 269-5691
 Division: Alaska State Troopers Date: 01/12/94
 Approved by Commissioner: *[Signature]* Date: 01/19/94
 Agency: Richard L. Burton, Dept. of Public Safety

PREPARER TO _____ OFFICE OF THE CLERK OF THE LEGISLATIVE ASSEMBLY

BILL NO: HB 313

DATE: January 19, 1994

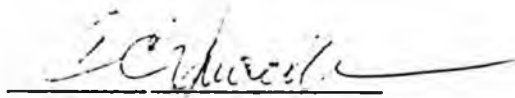
TITLE: "An Act relating to
suspension of imposition of
criminal sentences. . ."

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

HB 313 would amend the current disorderly conduct punishment section to include a suspended imposition of sentence for ninety days from the time of sentencing. The bill also allows a change in AS 12.55.085 so that the legislature can extend the period of time for which a sentence may be suspended for any specific crime.

This bill has no impact on AST enforcement practices and primarily has a post sentence impact. The bill allows for an informal probation to be imposed by the court requiring the individual charged to adhere to acceptable behavior standards over the course of the suspended sentence and as a result of that conduct allows the individual to have the sentence and ultimately the record suspended in the case of this minor charge.

The Department supports this bill. It would be a savings in court time for Troopers involved in these cases and it would most likely result in more pleas of no contest or guilty. It should also relieve some prosecution time and jail bed space. In most cases the ends of justice and the community is served best by requiring the individual involved to refrain from the activity for which he is charged under disorderly conduct. This may be accomplished appropriately with SIS sentences being extended over ninety days.



Richard L. Burton
Commissioner