

HB

47

CS FOR HOUSE BILL NO. 47(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BROWN, Robinson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of unlawful evasion."

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

3 * Section 1. AS 11.56.310(a) is amended to read:

4 (a) One commits the crime of escape in the second degree if, without lawful
5 authority, one

6 (1) removes oneself from

7 (A) a correctional facility while under official detention;

8 (B) official detention for a felony or for extradition; or

9 (C) official detention and during the escape, or at any time

10 before being restored to official detention, one possesses on or about oneself
11 a firearm; or

12 (2) violates AS 11.56.340 [OR 11.56.350] and during the time of the
13 unlawful evasion, or at any time before being restored to official detention, one
14 possesses on or about oneself a firearm.

15 * Sec. 2. AS 11.56.320(a) is amended to read:

- 1 (a) One commits the crime of escape in the third degree if one
2 (1) removes oneself from official detention during any lawful
3 movement or activity incident to confinement within a correctional facility for a
4 misdemeanor; or
5 (2) violates AS 11.56.340 [OR 11.56.350] and leaves or attempts to
6 leave the state.

7 * Sec. 3. AS 11.56.340 is amended to read:

8 Sec. 11.56.340. UNLAWFUL EVASION [IN THE FIRST DEGREE]. (a) A
9 person commits the crime of unlawful evasion [IN THE FIRST DEGREE] if, while
10 charged with or convicted of a felony or a misdemeanor,

11 (1) the person fails to return to official detention within the time
12 authorized following temporary leave granted for a specific purpose or limited period,
13 including leave granted under AS 33.30.181; or

14 (2) while on furlough under AS 33.30.101 - 33.30.131 the person fails
15 to return to the place of confinement or residence within the time authorized by those
16 having direct supervision.

17 (b) Unlawful evasion [IN THE FIRST DEGREE] is a class A misdemeanor.

18 * Sec. 4. AS 18.65.705(4) is amended to read:

19 (4) has not been convicted, within the five years immediately preceding
20 the application, of, and is not currently charged under a complaint, information,
21 indictment, or presentment with, any of the following misdemeanor offenses or similar
22 laws of another jurisdiction:

23 (A) AS 11.41.230, 11.41.250, 11.41.270;

24 (B) AS 11.46.315, 11.46.320, 11.46.330, 11.46.430, 11.46.484;

25 (C) AS 11.51.130;

26 (D) AS 11.56.330, 11.56.340, former AS 11.56.350
27 [11.56.350], 11.56.380, 11.56.545, 11.56.700, 11.56.710, 11.56.740, 11.56.780,
28 11.56.790, 11.56.800, 11.56.805;

29 (E) AS 11.61.110, 11.61.120, 11.61.210, 11.61.220, 11.61.240;

30 or

31 (F) AS 11.71.050, 11.71.060;

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* Sec. 5. AS 33.30.141(b) is amended to read:

(b) The failure of a prisoner on a furlough to return to the place of confinement or residence within the time specified by those having direct supervision over the prisoner is an unlawful evasion under AS 11.56.340 [AS 11.56.340 - 11.56.350] .

* Sec. 6. AS 11.56.350 is repealed.

SPONSOR STATEMENT

HB 47

An Act relating to the crime of unlawful evasion.

Current law has two degrees of unlawful evasion--which is the failure to return to detention at a correctional facility or a "half-way" house when so required.. For individuals charged with or convicted of a felony, the offense of unlawful evasion is a class "A" misdemeanor, carrying a sentence of up to one year. For those charged with or serving time for misdemeanor offenses, the crime becomes unlawful evasion in the second degree and is lowered to a class "B" misdemeanor.

HB 47 would eliminate the distinction between first and second degree unlawful evasion, creating a single crime of unlawful evasion with the maximum class "A" misdemeanor penalty.

The success of a community corrections program depends on responsibility and trust. An individual serving time for a felony or a serious misdemeanor like drunk driving, earns the privilege of participating in a community corrections program by demonstrating personal responsibility and trustworthiness. Appropriate sanctions for violating that trust must be in place for the system to have the respect of participants.

A class "B" misdemeanor charge for unlawful evasion in the second degree, is not considered a serious enough offense to warrant efforts by law enforcement and prosecutors to apprehend and convict offenders. The penalties are relatively insignificant and carry little or no leverage to deter an inmate from simply failing to return to custody when required.

The crime of unlawful evasion is as much a violation of trust by an individual serving time for a serious misdemeanor as for one serving time for a felony.

It is appropriate that there be only the single crime of unlawful evasion carrying the maximum class "A" misdemeanor penalty. When it comes to a violation of trust, the status of the offender (felon or misdemeanant) should be irrelevant.

SECTIONAL ANALYSIS

HB 47

An Act relating to the crime of unlawful evasion.

Sections 1& 2

References to unlawful evasion in the second degree are deleted from statutes referring to the crime of escape in the second and third degree.

Section 3

The crime of unlawful evasion in the second degree is eliminated--leaving the single crime of unlawful evasion for those charged with, or convicted of either a felony or misdemeanor who "walk away" from detention, correctional facilities or half-way houses. Unlawful evasion is a class "A" misdemeanor.

Section 4

Cites the *former* unlawful evasion in the second degree (repealed by this bill) as an offense creating ineligibility for a concealed handgun permit.

Section 5

References the single crime of unlawful evasion in Department of Corrections statutes.

Section 6

Unlawful evasion in the second degree is repealed.

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During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4998

January 25, 1995

Representative Jeanette James
Chair, State Affairs Committee

Dear Representative James;

Attached is an amendment I propose to HB 47, An Act relating to the crime of unlawful evasion.

I believe this is of particular interest to you because it would correct an inadvertent oversight in the concealed weapons permit statutes.

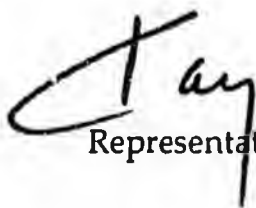
While preparing the sectional analysis for HB 47, I noticed that conviction for unlawful evasion in the second degree (AS 11.56.350, a class "B" misdemeanor) was cited as one of the offenses that would result in a five-year prohibition on eligibility for a concealed weapons permit. However, no citation was made to the crime of unlawful evasion in the first degree, a class "A" misdemeanor (AS 11.56.340).

The purpose of HB 47 is to clarify the crime of unlawful evasion--failure to return to a community corrections facility when required. The bill would eliminate the class "B" misdemeanor and leave only the single offense of unlawful evasion, a class "A" misdemeanor. The penalty would be the same whether the individual was serving a sentence for a felony or misdemeanor.

The attached amendment to HB 47 conforms the concealed weapons permit statutes to provide that conviction for unlawful evasion (AS 11.56.340) would make an individual ineligible for a permit for five years.

Please contact me or my staff (Dan Austin) at 465-4998/3768 if you have any questions on the bill or this proposed amendment.

Sincerely,



Representative Kay Brown

DISTRICT 15

Downtown • Fairview • Northstar • Romig • South Addition • Spenard

#1
AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: HB 47

- 1 Page 2, line 26, following "AS 11.56.330,":
- 2 Insert "11.56.340,"

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 47

Revision Date: NA Dept. Affected: Corrections
 Title: _____ BRU: institutions
 An Act relating to the crime of unlawful evasion Component: all inst.
 Sponsor: Rep. Brown
 Requester: Rep. Brown COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES	0.0					
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CHANGE IN REVENUES ()						
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FUND 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	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill removes the phrase in the first degree for the crime of unlawful evasion in AS11.56.340 and expands it to include those convicted of a misdemeanor. Sec. 5 of the bill amends AS 33.30.141 to include the changes to As 11.56.340.

The impact of this bill on DOC are deemed to be negligible based on the following assumptions:

- 1/ Furloughed felons are currently returned to prison in incidents that would be within the scope of of 11.56.340. Thus there would be no additional impact.
- 2/ Prosecutors would continue the past practice of declining to charge in these cases.

Assumption 2 is based on very limited past practice and is not a position taken by the Department of Law. Should this practice change, DOC would be required to re-evaluate this issue as DOC would have no choice but to accept the offender into the prison system to serve any additional sentence.

Prepared by: Jerry Shriner
 Division: Comm. Office
 Approved by Commissioner: Maureen M. Pugh
 Agency: Department of Corrections

Phone: 465-4640
 Date: 1/19/95
 Date: 1-21-95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 47

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to the crime of unlawful evasion." BRU: Prosecution
 Component: All
 Sponsor: Representative Brown
 Requester: Representative Brown COMPONENT SERIAL NO. 0085 - 0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND 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	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.56 to consolidate the crimes of unlawful evasion in the first and second degrees into a single offense. Under current law, unlawful evasion in the first degree applies to persons charged or convicted of a felony, and the penalty is a class A misdemeanor. And, currently, unlawful evasion in the second degree applies to persons charged or convicted of a misdemeanor, and the penalty is a class B misdemeanor. The bill has the effect of raising the penalty for a person charged or convicted of a misdemeanor, who fails to return to official detention within the time authorized following temporary leave, or who, while on furlough under AS 33.30, fails to return to the place of confinement or residence, from a class B misdemeanor to a class A misdemeanor. Typically, this offense occurs when an offender walks away from or fails to return to a half-way house or residential treatment center. As a result, the bill treats all unlawful evasion offenses consistently by making them class A misdemeanors. The department believes that the change in penalties is not sufficiently different to cause many defendants to go to trial. Therefore, a fiscal impact is not expected.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/23/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/23/95
 Agency: Department of Law

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A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: HB 47

1 Page 2, following line 17:

2 Insert new bill sections to read:

3 ** Sec. 4. AS 12.55.135(e) is amended to read:

4 (e) Except as provided in AS 12.55.055(f), if a defendant is sentenced under
5 (c), (d), [OR] (f); or (g) of this section,

6 (1) execution of sentence may not be suspended and probation or
7 parole may not be granted until the minimum term of imprisonment has been served;

8 (2) imposition of a sentence may not be suspended except upon
9 condition that the defendant be imprisoned for no less than the minimum term of
10 imprisonment provided in the section; and

11 (3) the minimum term of imprisonment may not otherwise be reduced.

12 * Sec. 5. AS 12.55.135 is amended by adding a new subsection to read:

13 (g) A defendant convicted of unlawful evasion shall be sentenced to a
14 minimum term of imprisonment of 180 days."

15 Renumber the following bill sections accordingly.