

SB

268

9-LS1587F
Luckhaupt
3/21/96

CS FOR SENATE BILL NO. 268()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to release before trial in cases involving alcohol, controlled
2 substances, stalking, or domestic violence."

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

4 • Section 1. AS 12.30 is amended by adding a new section to read:

5 Sec. 12.30.023. RELEASE BEFORE TRIAL IN CASES INVOLVING
6 ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES. In determining the
7 conditions of release under AS 12.30.020 in cases involving a violation of AS 04,
8 AS 11.71, or AS 11.73, the court shall consider the conditions specified in
9 AS 12.30.020 and the following conditions and impose one or more conditions it
10 considers reasonably necessary to protect the public safety and security, including
11 ordering the defendant

12 (1) to obey all laws;

13 (2) to submit to a search of the defendant's person, personal property,
14 residence, vehicle, or any vehicle over which the defendant has control, for the

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presence of alcoholic beverages or illegal drugs and drug paraphernalia by a peace officer who has reasonable suspicion that the defendant is violating the terms of the defendant's bail release by possessing alcoholic beverages or illegal drugs and drug paraphernalia;

(3) in

(A) controlled substances offenses, to enrce" in a random drug testing program, at the defendant's expense, to detect the presence of an illegal drug, with testing to occur not less than once a week, and with the results being submitted to the court and the district attorney's office;

(B) alcoholic beverage offenses, to submit to a breath test when requested by a law enforcement officer;

(4) to not have ^{possession or control} on the defendant's person, in the defendant's residence, or in any vehicle over which the defendant has control, any alcoholic beverages or controlled substances or related paraphernalia;

(5) to not use, manufacture, possess, handle, purchase, give, or administer any controlled substance or alcoholic beverage;

(6) to not associate with persons involved in using, manufacturing, growing, or distributing controlled substances or alcoholic beverages;

(7) to not enter or remain in places where controlled substances or alcoholic beverages are being used, manufactured, grown, or distributed;

(8) to not be physically present, within a two-block area of, or within a designated area near, the location at which the offense occurred or at other designated locations, unless the defendant actually resides within that area;

(9) to not use or possess a paging device, cellular phone, or other portable communicative device on the defendant's person, in any vehicle over which the defendant has control, or in the defendant's residence;

(10) to be physically inside the defendant's residence, or in the residence of the defendant's third-party custodian, between time periods set by the court, except as otherwise required by employment, education, counseling, or treatment and as specifically authorized by the court;

(11) to not possess a firearm ^{Have a} on the defendant's ^{person's} person, in any vehicle

1 ~~(B)~~ over which the defendant has control, or in the defendant's residence; *or a knife on the*

2 ~~(12)~~ (12) to attend or continue to attend alcohol or controlled substance *possession;*
3 counseling or treatment; and

4 (13) to not engage in any conduct or to refrain from any conduct that
5 the court considers reasonably necessary to protect the public. *and to assure the*

6 * Sec. 2. AS 12.30.025(a) is amended to read: *eyes, and of the person in*

7 (a) In determining the conditions of release under AS 12.30.020 in cases
8 involving domestic violence or stalking, the court shall consider the conditions
9 specified in AS 12.30.020 and the following conditions and impose one or more
10 conditions it considers reasonably necessary to protect the alleged victim of the
11 domestic violence or stalking, including ordering the defendant

12 (1) not to subject the victim to further domestic violence or stalking;

13 (2) to vacate the home of the victim;

14 (3) not to contact the victim other than through counsel;

15 ~~(4)~~ (4) to engage in counseling; if the court directs the defendant to engage
16 in personal counseling, the court shall provide in the order that the counseling must
17 propose alternatives to aggression if that type of counseling is available; if the court
18 directs the defendant to participate in family counseling, it shall make a finding that
19 family counseling will not result in additional domestic violence or stalking;

20 *Remember* (5) to refrain from the consumption of alcohol or the use of drugs.

Delete

(C) Add Dom. Violence

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/7/96

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/28/96

The Judiciary Committee considered SB 268

Relating to release before trial in cases involving controlled substances.

and recommends:

- be replaced with CS SB 268 (JUD)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>	<i>Ph. Ellis</i>	<input checked="" type="checkbox"/>		
		<i>Lynda Green</i>	<input checked="" type="checkbox"/>		
		<i>Al Adams</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Adrian W. Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>Trial Courts</i>	<i>3/27/96</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>Corrections</i>	<i>3/11/96</i>	<input checked="" type="checkbox"/>	
<i>Law-Criminal Div</i>	<i>3/12/96</i>	<input checked="" type="checkbox"/>	
<i>Public Safety</i>	<i>3/11/96</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

MEMORANDUM.

State of Alaska
Department of Law

TO All Criminal Division Attorneys

DATE January 24, 1996

FILE NO


TEL. NO

SUBJECT

465-3428

Bail Conditions in Drug and
Alcohol Cases

FROM

Laurie H. Otto 
Deputy Attorney General
Criminal Division Central Office

As you are aware, consumption and trafficking in illegal narcotics is a major problem throughout the state. In rural Alaska, a similar problem exists with selling and importing alcohol in local option areas. An even more significant concern from a public policy standpoint occurs when defendants who have been released on bail continue to engage in illegal drug consumption or trafficking, or alcohol sales or importation. In an effort to uniformly address the problem of defendants engaging in drug and alcohol crimes while on bail, and hopefully prevent it from occurring so that we can fully protect the public, the following standard bail conditions should be requested in cases where the defendant is charged with drug or alcohol offenses.

Unless there are case or offender specific reasons for continued pretrial detention, it is not normally appropriate to prevent the release of drug or alcohol offenders pending trial, but we do want to ensure that these defendants do not pose a danger to the community while on release, that the police have sufficient authority to search them, and that conditions are imposed such that release can be immediately revoked before further alcohol or drug crimes are committed. The standard bail conditions that we should request in every drug or alcohol case are:

(1) Defendant shall obey all laws.

(2) Defendant shall submit to a search of his or her person, personal property, residence, vehicle, or any vehicle over which the defendant has control, for the presence of illegal drugs and/or drug paraphernalia, or in alcohol cases, for the presence of alcoholic beverages, by a peace officer who has a reasonable suspicion that defendant is violating the terms of his or her bail release by possessing drugs, drug paraphernalia, or alcoholic beverages.

(3) In drug cases, defendant shall enroll in a random drug testing program (at defendant's expense) to detect the presence of illegal drugs, with testing to occur no less than one time per week, and with the results being submitted to the court and the District Attorney's Office. (In rural locations where testing may not be available, appropriate discretion should be



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2025

SPONSOR STATEMENT

Senate Bill 268

"An Act relating to release before trial
in cases involving controlled substances."

This legislation establishes new criteria for Alaska courts to consider in making decisions about pre-trial release of drug offenders. Each year, a substantial number of defendants in drug cases are arrested again, before adjudication of the original offense. According to the Anchorage Police Department, the below examples are NOT isolated cases, they are the norm:

- One street corner cocaine dealer was arrested, bailed out, and shortly thereafter, arrested again while selling cocaine just a short distance from the original arrest.
- Another person operating a crack house was arrested and released after promptly posting bail, only to re-open the business in the same house immediately upon release.

The public feels unsafe and loses confidence in the criminal justice system when drug offenders regularly engage in illegal drug consumption and trafficking even after arrest and this appears to be a recognized problem not only in Anchorage but across the State.

While SB 268 cannot prevent the release of drug offenders pending trial, it will decrease the opportunity for the defendant to pose a threat to the community while on release. It will provide for sufficient authority for the police to search them, and enable revocation of release.

Municipality of Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 348-4433

Rick Mystrom, Mayor

February 8, 1996

OFFICE OF THE MUNICIPAL MANAGER

Senator Loren Leman
Alaska State Legislature
State Capitol
Juneau, AK 99801

FEB 12 1996

Re: Senate Bill 268

Dear Senator Leman:

Mayor Mystrom supports Senate Bill 268, revising the statute relating to release conditions for those arrested for the sale, possession, or consumption of controlled substances.

Each year, a substantial number of defendants in drug cases are arrested again on similar charges, even before adjudication of the original offense. Approximately 2 months ago, a known drug dealer was arrested for misconduct of a controlled substance. He was released on bail and was back on the street only to be arrested for the same charge shortly thereafter. A female was arrested and charged with the same offense. Again, she was released on bail only to be caught on video tape a short time later dealing once again.

The judges and magistrates have the ability to impose the type of restrictions being proposed, but there is inconsistency in their application. The proposed legislation will help ensure that arrest is not just a minor inconvenience for drug dealers.

The conditions being proposed are those designed to hinder drug offenders by restricting their use of some of the tools of the trade. They would be restricted from returning to their place of business, using cellular phones or beepers, maintaining their regular business hours. Other conditions would subject them to engage in substance abuse counseling and drug screening if appropriate.

Sen. Leman
2/8/96
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Viewing the same dealers on nearby street corners soon after arrest instills little public confidence in our public safety and judicial systems. This legislation takes a positive step toward solving this program.

Thank you for your introducing this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Rogers". The signature is written in a cursive style with a large, sweeping initial "T".

Tim Rogers
Legislative Program Coordinator

FEB 06 '96 02:51PM ANCHORAGE POLICE

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Rick Nyström,
Mayor

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500



Service since 1891

February 6, 1996

Senator Loren Leman
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Re: "Catch and Release" of Repeat Drug Offenders

Dear Senator Leman:

The Anchorage Police Department supports a revision of the statutes relating to release conditions for those arrested for the sale, possession, or consumption of controlled substances. Each year, a substantial number of defendants in drug cases are arrested again, even before adjudication of the original offense. Most have ready cash available for bail, and once free, continue their trade in violation of the few additional conditions of release. Some examples include:

- One street corner cocaine dealer was arrested, bailed out, and shortly thereafter, arrested again while selling cocaine just a short distance away from the original arrest.
- Another person operating a crack house was arrested and released after promptly posting bail, only to re-open the business in the same house immediately upon release.
- A third dealer, an obviously pregnant woman, was arrested for selling cocaine to passing motorists. She, too, was arrested again shortly after being released.
- On a larger scale, the National Guard set up surveillance on a group of marijuana dealers after their release on bail. Within one week, the same individuals were seen buying new marijuana growing equipment and other hydroponics supplies from a local greenhouse.

These are not isolated cases; in fact, they are the norm. By virtue of large amounts of unreported income from the sale of drugs, and the comparatively low amounts of bail set on defendants, immediate release is a near-certainty.

FEB 06 '96 02:52PM ANCHORAGE POLICE

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Report Drug Offenders
February 6, 1996

The Municipality of Anchorage has a greater share of offenders due to its population density and availability of various contraband. As such, both the Anchorage Police Department and the entire criminal justice system must deal with the same criminals time and again. Also at issue is the safety and concern of the public. When the same dealers are seen selling drugs day after day, even after having been arrested, confidence in our judicial system is surely eroded.

We would therefore encourage you to support amendments to AS 12.30.020 regarding the determination of release conditions for cases involving controlled substances.

Sincerely,



Duane E. Udland
Deputy Chief of Police