

HB

368

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 6, 2000

FURTHER REFERRALS:

Date of Committee Action: 4-6-00

The FINANCE Committee considered:

HB 368

HOUSE BILL NO. 368

RELEASE OF CRIMINAL DEFENDANT

"An Act relating to release of persons before trial and before sentencing or service of sentence; relating to custodians of persons released, to security posted on behalf of persons released, and to the offense of violation of conditions of release; amending Rule 41(f), Alaska Rules of Criminal Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute PS HB 36B (JUD) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) Corrections 2/11/00

DOA 2/11/00

zero fiscal note(s) _____

zero fiscal note(s) Law 2/11/00

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gordon Muldoon</i>	Muldoon	X			
<i>Carla Bunde</i>	Bunde	✓			
<i>Alan Austinman</i>	Austinman			X	
<i>J. N. T. Davis</i>	J. DAVIS			X	
<i>Greg Grossindorf</i>	Grossindorf			X	
<i>John G. Davis</i>	G. DAVIS			X	
<i>Ed Williams</i>	Williams			X	
<i>Keith Phillips</i>	Phillips	✓			
<i>Gene Therriault</i>	THERRIAULT			X	
<i>John Foster</i>	Foster			X	

CHAIR'S SIGNATURE *Gordon Muldoon* *Gene Therriault* (3) (3)

FISCAL NOTE

No:

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: HB 368
(H) Publish Date: 2/11/00

Revision Date: 2/7/00
Title: "An Act relating to release of persons before trial..."

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

Sponsor: Rules Committee
Requestor: Governor

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	26.8	26.8	26.8	26.8	26.8	26.8
TRAVEL	1.0	1.0	1.0	1.0	1.0	1.0
CONTRACTUAL	3.2	3.2	3.2	3.2	3.2	3.2
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	6.5	0.6	0.6	0.6	0.6	0.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	38.0	32.1	32.1	32.1	32.1	32.1

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE:

(Thousands of Dollars)

1002 Federa' Receipts						
1003 GF Match						
1004 GF	38.0	32.1	32.1	32.1	32.1	32.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	38.0	32.1	32.1	32.1	32.1	32.1

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: 2/7/00

Approved by Commissioner: Bob Poe
Agency: Department of Administration

Date: 2/7/00

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA

BILL NO. _____

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill creates a new misdemeanor offense: Violation of Condition of Release. In addition, the bill provides for "performance bonds." Under current practice, when people are released on bail, judges routinely impose conditions of release in addition to an "appearance bond." If they fail to appear, they can be charged with a crime and the appearance bond can be forfeited. Currently, if defendants appear as ordered but violate conditions of release, they are generally returned to jail. If this bill becomes law, defendants would be charged with a new offense (Violation of Condition of Release) and be required to forfeit performance bonds.

This bill would affect Public Defender Agency operations. We represent many people in bail hearings every day. We did a rough study of court calendars in Anchorage, Fairbanks, Palmer, and Kenai for a ten-day period last year. We covered 335 bail and arraignment hearings just in that period. Most defendants who are released on conditions do not violate conditions. But given the volume, there are a substantial number who will. The Public Defender Agency will need additional staff to handle the increased workload in bail hearings and new misdemeanor cases this bill would cause.

Anchorage is our busiest court location for bail hearings. The addition of a half-time Associate Attorney I on our Anchorage staff would enable us to meet handle the additional workload this bill would cause.

FISCAL NOTE

Bill Version: HB 368
 (H) Publish Date: 2/11/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "... relating to release of persons before trial BRU Criminal Division
and ... to the offense of violation of conditions of release ..." Component 1st-4th Judicial Districts; Criminal
 Sponsor Rules Committee Appeals/Special Litigation
 Requester Governor Component No. 2198-99:2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adopts stronger enforcement measures to encourage persons released before trial, imposition of sentence, or service of sentence to abide by conditions of release. One of the enforcement measures included in the bill is the creation of a new crime. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor. Currently, although it is a crime to wilfully fail to appear as ordered by the court, there are few options for violation of other release conditions except incarcerating the person.

The bill also clarifies the law as it relates to performance bonds, and the forfeiture of the posted security on violation of conditions of release; provides that the court may find a third-party custodian in contempt for failure to report immediately a defendant's violations of conditions of release; and clarifies the court may order a person begin their

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date/Time 2/9/00, 10:07 AM
 Approved by Commissioner Bob M. Betelho *Bob M. Betelho* Attorney General Date 2/9/00
 Agency Department of Law

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO.

ANALYSIS CONTINUATION

sentence at a later date than when the sentence is imposed.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. The department already appears in court when conditions of release are violated to try and get the person's release revoked by the court, and passage of this bill will not increase the time commitment already required.

FISCAL NOTE

Bill Version: HB 368
 (H) Publish Date: 2/11/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to release of persons before BRU Administration and Operations
trial and before sentencing or service of sentence; relating... Component All
 Sponsor Rules Committee
 Requester Governor Component No. #0594

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This legislation creates the new crime of "violation of condition of release." The Dept. of Corrections believes this new crime will have a small impact on the number of offenders in DOC custody and therefore is submitting an indeterminate fiscal note. Under current law, if offenders violate their conditions of release they cannot be arrested unless a new crime is committed. This presents a problem for law enforcement and public safety. If passed, this legislation would allow for an immediate arrest and return to custody of violators and a decrease in the risk to the public safety. Under current law the offender would eventually be returned to custody. This is simply a more efficient method of removing an offender from the community immediately upon violation as opposed to waiting for the offender to be brought before the Court. If an offender is convicted of this new crime, they will most likely receive a concurrent sentence. A small fraction may receive sentences in addition to their original conviction resulting in a small cost to DOC.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307
 Division Commissioner's Office Date/Time 2/9/00 10:05 AM
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2/8/00
 Agency Dept. of Corrections

FRED'S BAIL BONDING

Fred Adkerson • 2550 Denali Street, Suite 1302 • Anchorage, AK 99503 • (907) 276-3443 • Fax (907) 274-2245

April 5, 2000

TO: ALASKA STATE LEGISLATURE
HOUSE FINANCE COMMITTEE
JUNEAU, ALASKA

Fax: 1-907-465-6813

RE: HB 368

I am Fred Adkerson, the owner and operator of Fred's Bail Bonding for the past 31 years. I was on the telephone for two and one-half hours today in an attempt to testify personally, but apparently you were not able to take testimony today on the above captioned Bill, so I respectfully request that the attached be read into the record as my testimony in opposition to HB 368.

Should you have any further questions, please feel free to contact me at the above number.

Thank you for your consideration.

Very truly yours,



FRED ADKERSON

FA:blg
Attachment

FRED'S BAIL BONDING

Fred Adkerson • 2550 Denali Street, Suite 1302 • Anchorage, AK 99503 • (907) 276-3443 • Fax (907) 274-2245

Re. HB 368

This is a bad bill. HB 368 sponsored by the Governor and Department of Law is a bad bill and should be rejected as agreed upon by the Court of Appeals of the State of Alaska on February 18th, 2000 (Opinion Nr. 1661 Lonis vs. State of Alaska) in which Judge Zervos of Ketchikan tried to uphold a performance bond but the Court of Appeals found this to be unacceptable.

HB 368 will increase jail overcrowding and add to the Taxpayers' burden. For example, approximately 70% of the prisoners at CIPT in order to make bail are required to have some sort of performance requisite and/or Third Party Custodianship which either delays or prevents their ability to bail. This in turn adds to the jail overcrowding problem for which the Taxpayer foots the bill.

For your information, Alaska is the only State in the Nation requiring Third Party Custodians. Getting rid of the Third Party Custodian requirement would greatly reduce jail overcrowding; and at the same time allow defendants their constitutional right to reasonable bail as is already delineated in the Alaska Statutes. Elimination of the Third Party Custodian requirement would free bed space to accommodate incoming prisoners. And, this would help eliminate Department of Corrections having to send prisoners outside, e.g., to Arizona.

Getting rid of the Third Party Custodian requirement, alone, would save the State of Alaska millions of dollars.



FRED ADKERSON

FISCAL NOTE

Bill Version: HB 368

(H) Publish Date: 2/11/00

STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title <u>"... relating to release of persons before trial</u>	BRU	Criminal Division
and <u>... to the offense of violation of conditions of release ..."</u>	Component	1st-4th Judicial Districts; Criminal
Sponsor <u>Rules Committee</u>		Appeals/Special Litigation
Requester <u>Governor</u>	Component No.	<u>2198-99;2201/03/61/79</u>

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill adopts stronger enforcement measures to encourage persons released before trial, imposition of sentence, or service of sentence to abide by conditions of release. One of the enforcement measures included in the bill is the creation of a new crime. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor. Currently, although it is a crime to wilfully fail to appear as ordered by the court, there are few options for violation of other release conditions except incarcerating the person.

The bill also clarifies the law as it relates to performance bonds, and the forfeiture of the posted security on violation of conditions of release; provides that the court may find a third-party custodian in contempt for failure to report immediately a defendant's violations of conditions of release; and clarifies the court may order a person begin their

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Attorney General's Office
 Approved by Commissioner: Bob M. Betelho *Bob M. Betelho* Attorney General
 Agency: Department of Law

Phone 465-5370
 Date/Time 2/9/00, 10:07 AM
 Date 2/9/00

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

BILL NO.

STATE OF ALASKA
2000 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

sentence at a later date than when the sentence is imposed.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. The department already appears in court when conditions of release are violated to try and get the person's release revoked by the court, and passage of this bill will not increase the time commitment already required.

SECTIONAL ANALYSIS - HB 368

Pretrial Release

The purpose of HB 368 is to give the criminal justice system more tools to allow a person charged with a crime to be released before trial, or pending sentence or appeal, and at the same time protect the public and ensure that the person will appear for trial or other procedures. When a court releases a defendant on condition that the defendant abide by certain conditions, it is important to the safety of the public and the victim that the defendant honor the conditions.

Sections 1, 2, and 4: One important tool for pretrial release is putting the defendant in the custody of a third party. The custodian is charged with the responsibility of making sure that the defendant abides by conditions the court has imposed; the custodian must report to the courts or the police if the defendant violates conditions. It is a responsibility that most custodians take very seriously. Some, however, do not. The bill specifies that a custodian must promise to immediately notify the police or court if the defendant has violated conditions, or face the possibility of being found in contempt.

Section 3: Currently, if a defendant is released before trial on certain conditions, violation of the condition results in the possibility that the defendant may be put back in jail for the original charge. The defendant will be given credit for time served against any sentence imposed on the original charge; there aren't additional consequences for the violation that would discourage the defendant from violating conditions. The bill adopts a misdemeanor offense for a person who violates release conditions - a class A misdemeanor if the person is charged with a felony, and a class B misdemeanor if the person is charged with a misdemeanor. Both the Municipality of Anchorage and the City and Borough of Juneau have similar ordinances, and have found them to be very useful tools in encouraging defendants to abide by conditions of release.

Section 4: The bill specifically allows courts to impose performance bonds; performance bonds allow a court to require a defendant to post a bond which will be forfeited if the defendant does not abide by conditions of release. Judges in some parts of the state have been imposing performance bonds for many years; these are very useful in encouraging people to honor their conditions. On February 18, 2000, however, the Court of Appeals decided that the bail statutes do not allow for imposition of performance bonds. (*Lonis v. State*, Op. No. 1661, February 18, 2000.) This bill specifically provides specific statutory authorization of performance bonds. Defendants have a monetary reason, in addition to other reasons, to honor release conditions if a performance bond is imposed.

Sections 5, 6 and 8: Amends the bail statutes and the court rule for forfeiture of security by requiring forfeiture of security if the defendant violates a condition of release that prohibits contact with a victim or witness. It allows the court to forfeit security if the person violates other conditions. It provides that a person may ask the court to set aside the forfeiture if the failure to appear or abide by conditions, not including a condition not

to contact a victim or witness, was due to circumstances beyond the control of the defendant. The forfeiture may be set aside for violation of a condition not to contact a victim or witness if the contact was not knowing or intentional.

Section 7: Clarifies the law to specifically allow courts to order defendants to begin service of a sentence date in the future. This is important in managing prison populations.

Sections 9 and 10: These adopt applicability and effective date clauses.

TONY KNOWLES
GOVERNOR
GOVERNOR OF THE STATE OF ALASKA

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
JUNEAU, ALASKA
FEB 10 2000
FAX 907-586-3000
WWW.GOV.AK.US

February 10, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting a bill that will protect the public by adopting stronger enforcement measures to encourage persons to abide by their conditions of release before trial, imposition of sentence, or service of sentence. Specifically, the bill addresses four areas explained in more detail below:

- Establishing the crime of violating conditions of release;
- Authorizing courts to order performance bonds;
- Charging contempt of court for third-party custodian's failure to report condition violation;
- Authorizing delayed reporting date for jail time.

Violating Conditions of Release. In criminal cases, an accused has a constitutional right to be released on bail before trial. Persons who have been found guilty of a crime may be released before sentence is imposed or before ordered to serve a sentence. When releasing a person, the court may impose both general conditions, such as requiring that the accused violate no laws, and conditions specific to the particular case or defendant, such as forbidding an accused in a domestic violence case from contacting the victim. The safety of the victim often depends on the enforcement of release conditions. Currently, although it is a crime to willfully fail to appear as ordered by the court, there are few options for violation of other release conditions, except incarcerating the person. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor.

The Honorable Brian Porter

February 10, 2000

Page 2

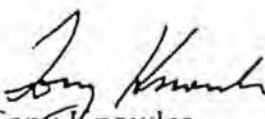
Performance Bonds. The bill clarifies the law by specifically authorizing the court to order the accused to post a performance bond, and requires that the court forfeit the security if the person violates a condition of no contact with the victim or witness in a proceeding. The court may forfeit the security if the accused violates other conditions. The standard for forfeiture of security in Rule 41(f), Alaska Rules of Criminal Procedure, is amended to require that security be forfeited unless the defendant could not comply due to circumstances beyond the control of the defendant. An example of such circumstances includes weather conditions that prevent airplane transportation. if there is no alternative way to travel to court.

Third Party Custodians. Courts often release a defendant to the custody of a third party, either an individual or an organization. Custodians are required to report to the court or the police if the defendant violates release conditions, but often do not. The bill provides that a third-party custodian can be found in contempt for failing to report immediately a defendant's violations of conditions of release ordered by the court, and requires the court to inform the custodian of the possible consequences of ignoring the duty to report.

Delayed Reporting Date. The bill specifically gives the court the authority to order a person sentenced to a period of incarceration to begin serving the sentence at a date sometime after it was imposed. With overcrowded correctional facilities, this is useful to help avoid "bottlenecks" in admissions by proper scheduling.

I urge your prompt and favorable consideration of this measure.

Sincerely,


Tony Knowles
Governor