

HB

368

1-GH2027G
Luckhaupt
3/2/00

3/3/00
JUD
Adopted
3/3/00
+
moved
after
amended

CS FOR HOUSE BILL NO. 368(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to release of persons before trial and before sentencing or
2 service of sentence; relating to when service of sentence shall begin; relating to
3 custodians of persons released, to security posted on behalf of persons released,
4 and to the offense of violation of conditions of release; and amending Rule 41(f),
5 Alaska Rules of Criminal Procedure."

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

7 * Section 1. AS 09.50.010 is amended to read:

8 Sec. 09.50.010. Acts or omissions constituting contempt. The following acts
9 or omissions with [IN] respect to a court of justice or court proceedings are contempts
10 of the authority of the court:

11 (1) disorderly, contemptuous, or insolent behavior toward the judge
12 while holding the court, tending to impair its authority or to interrupt the course of a
13 trial or other judicial proceeding;

- 1 (2) a breach of the peace, boisterous conduct, or violent disturbance,
2 tending to interrupt the course of a trial or other judicial proceeding;
- 3 (3) misbehavior in office, or other wilful neglect or violation of duty
4 by an attorney, clerk, peace officer, or other person appointed or elected to perform
5 a judicial or ministerial service;
- 6 (4) deceit or abuse of the process or proceedings of the court by a party
7 to an action or proceeding [PROCEEDINGS];
- 8 (5) disobedience of a lawful judgment, order, or process of the court;
- 9 (6) falsely pretending to act under authority to an order or process of
10 the court;
- 11 (7) rescuing a person or property in the custody of an officer by virtue
12 of an order or process of the court;
- 13 (8) unlawfully detaining a witness or party to an action or proceeding
14 while going to, remaining at, or returning from the court where the witness or party
15 is for trial;
- 16 (9) any other unlawful interference with the process or proceedings of
17 the court;
- 18 (10) disobedience of a subpoena duly served, or refusing to be sworn
19 or answer as a witness;
- 20 (11) when summoned as a juror in a court, neglecting to attend or
21 serve, or improperly conversing with a party to an action or proceeding to be tried at
22 the court or with another person in relation to the merits of the action, or receiving a
23 communication from a party or other person in respect to it without immediately
24 disclosing it to the court;
- 25 (12) disobedience by an inferior court, judge, magistrate, referee,
26 master, or officer of the lawful judgment, order, or process of a higher court, or
27 proceeding in an action or proceeding contrary to law after the action or proceeding
28 is removed from the jurisdiction of that inferior court, judge, magistrate, or officer;
- 29 (13) failure, when acting as a custodian appointed by the court for
30 a released person under AS 12.30, to report immediately that the person released
31 has violated a condition of release.

1 * Sec. 2. AS 09.50.020(a) is amended to read:

2 (a) A person who is guilty of contempt is punishable by fine of not more than
3 \$300 or by imprisonment for not more than six months. However, when the contempt
4 is one mentioned in AS 09.50.010(3) - (12), or in an action before a magistrate, the
5 person is punishable by a fine of not more than \$100 unless it appears that a right or
6 remedy of a party to an action or proceeding was defeated or prejudiced by the
7 contempt, in which case the penalty shall be as prescribed for contempts described in
8 AS 09.50.010(1), [AND] (2), and (13).

9 * Sec. 3. AS 11.56 is amended by adding a new section to read:

10 **Sec. 11.56.757. Violation of condition of release.** (a) A person commits the
11 crime of violation of condition of release if the person

12 (1) has been charged with a crime or convicted of a crime;

13 (2) has been released under AS 12.30; and

14 (3) violates a condition of release imposed by a judicial officer under
15 AS 12.30, other than the requirement to appear as ordered by a judicial officer.

16 (b) Violation of condition of release is

17 (1) a class A misdemeanor if the person is released from a charge or
18 conviction of a felony;

19 (2) a class B misdemeanor if the person is released from a charge or
20 conviction of a misdemeanor.

21 (c) In this section, "conviction" means that an adult, or a juvenile charged as
22 an adult under AS 47.12, has entered a plea of guilty, guilty but mentally ill, or nolo
23 contendere, or has been found guilty or guilty but mentally ill by a court or jury.

24 * Sec. 4. AS 12.30.020(b) is amended to read:

25 (b) If a judicial officer determines under (a) of this section that the release of
26 a person will not reasonably assure the appearance of the person, or will pose a danger
27 to the alleged victim, other persons, or the community, the judicial officer may

28 (1) place the person in the custody of a designated person or
29 organization agreeing as a custodian to supervise the person; the court shall inform
30 the custodian about the duties required of a custodian, and that failure to report
31 immediately in accordance with the terms of the order that the person released

1 has violated a condition of release may result in the custodian's being held in
2 contempt under AS 09.50.010:

3 (2) place restrictions on the travel, association, or place of abode of the
4 person during the period of release;

5 (3) require the person to return to custody after daylight hours on
6 designated conditions;

7 (4) require the execution of an appearance bond in a specified amount
8 and the deposit in the registry of the court, in cash or other security, a sum not to
9 exceed 10 percent of the amount of the bond; the deposit to be returned upon the
10 performance of the condition of release;

11 (5) require the execution of a bail bond with sufficient solvent sureties
12 or the deposit of cash; [OR]

13 (6) require the execution of a performance bond in a specified
14 amount and the deposit in the registry of the court, in cash or other security; the
15 deposit to be returned upon the performance of the condition of release; or

16 (7) impose any other condition considered reasonably necessary to
17 assure the defendant's appearance as required and the safety of the alleged victim,
18 other persons, or the community.

19 * Sec. 5. AS 12.30.060 is amended to read:

20 **Sec. 12.30.060. Penalties for failure to appear.** A person released under the
21 provisions of this chapter who knowingly [WILFULLY] fails to appear before a court
22 or judicial officer as required shall incur a forfeiture of any security that was given or
23 pledged for the person's release, as provided in AS 12.30.065, and, if the person was
24 released

25 (1) in connection with a charge of felony, or while awaiting sentence
26 or pending appeal after conviction of an offense, is guilty of a felony and upon
27 conviction is punishable by a fine of not more than \$5,000 or by imprisonment for not
28 more than five years, or by both;

29 (2) in connection with a charge of misdemeanor, is guilty of a
30 misdemeanor and upon conviction is punishable by a fine of not more than the
31 maximum provided for the misdemeanor, or by imprisonment for not more than one

1 year, or by both; or

2 (3) for appearance as a material witness, is guilty of a misdemeanor
3 and upon conviction is punishable by a fine of not more than \$1,000, or by
4 imprisonment for not more than one year, or by both.

5 * Sec. 6. AS 12.30 is amended by adding a new section to read:

6 **Sec. 12.30.065. Forfeiture of security.** (a) The court shall forfeit any
7 security given or pledged for the release of a person under this chapter if the person
8 violates a condition of release that prohibits the person from knowingly or intentionally
9 contacting, either directly or indirectly, a victim or witness in the proceeding.

10 (b) The court may order the forfeiture of all or a portion of any security given
11 or pledged for the release of a person under this chapter if the person fails to appear
12 before a court or judicial officer as required in an order by a court or judicial officer
13 or violates a condition of release other than one described in (a) of this section.

14 (c) If the court orders a forfeiture under this section, the court shall issue a
15 judgment for the amount forfeited. Proceedings to enforce the judgment may be
16 instituted by the prosecuting authority. Execution shall issue on judgments of
17 forfeiture entered under this subsection in the same manner as on other judgments for
18 the payment of money.

19 * Sec. 7. AS 12.55.025(c) is amended to read:

20 (c) Except as provided in (d) and (e) of this section, when a defendant is
21 sentenced to imprisonment, the term of confinement commences on the date of
22 imposition of sentence unless the court specifically provides that the defendant
23 must report to serve the sentence on another date. If the court provides another
24 date to begin the term of confinement, the court shall provide the defendant with
25 written notice of the date, time, and location of the correctional facility to which
26 the defendant must report. A defendant shall receive credit for time spent in custody
27 pending trial, sentencing, or appeal, if the detention was in connection with the offense
28 for which sentence was imposed. A defendant may not receive credit for more than
29 the actual time spent in custody pending trial, sentencing, or appeal. The time during
30 which a defendant is voluntarily absent from official detention after the defendant has
31 been sentenced may not be credited toward service of the sentence.

1 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section
2 to read:

3 DIRECT COURT RULE AMENDMENT. Rule 41(f), Alaska Rules of Criminal
4 Procedure, is amended to read:

5 (f) Forfeiture.

6 (1) Judgment of Forfeiture. If the person released on bail on the giving
7 or pledging of security fails to appear before a court or a judicial officer as required,
8 or violates a condition of release prohibiting the person knowingly or intentionally
9 from contacting a victim or witness, the judge or magistrate before whom the person
10 released was to appear shall provide for forfeiture of [FORFEIT] the security as
11 provided in AS 12.30.065. The clerk may sign the judgment of forfeiture if directed
12 to do so on the record in the particular proceeding by the judge. However, the
13 judgment of forfeiture may not be enforced until a hearing is held pursuant to
14 subparagraph (f)(3) of this rule [(d)(3)] or, if no hearing is requested, until 30 days
15 after the date of notice of the judgment of forfeiture. Nothing in this subparagraph
16 shall interfere with the issuance of a summons or bench warrant for a person who fails
17 to appear as required before a court or judicial officer.

18 (2) Notice of Forfeiture. The clerk shall send notice of the judgment
19 of forfeiture to the defendant, defendant's attorney and the person pledging the security
20 at their last known addresses. The notice must state that a hearing will be held on the
21 forfeiture if timely requested pursuant to subparagraph (f)(3) of this rule [(d)(3)].

22 (3) Hearing. If requested by the defendant or person giving or pledging
23 the security within 30 days of the date of notice of the forfeiture, the court shall hold
24 a hearing [TO DETERMINE WHETHER THE DEFENDANT'S FAILURE TO
25 APPEAR WAS WILLFUL]. The state, the defendant, the defense attorney, and the
26 person giving or pledging the security have the right to be heard at this hearing. The
27 court shall set aside the judgment of forfeiture if it is proven by a preponderance of
28 the evidence that the (A) failure to appear or failure to comply with a condition
29 other than one described in AS 12.65.065(a) was due to circumstances beyond the
30 control of the defendant; or (B) defendant's contact with a victim or witness did
31 not occur or was not done knowingly or intentionally [WAS NOT WILLFUL]. The

1 court may set aside the judgment of forfeiture if the court concludes that justice does
2 not require the enforcement of the judgment. An appeal may be taken from the
3 judgment of forfeiture in the manner of other appeals.

4 (4) Remission. Within one year after entry of judgment of forfeiture,
5 a person who has given or pledged security may apply to the court for a remission,
6 either in whole or in part, based on the return of the defendant with the assistance of
7 the person who gave or pledged security or upon such other extraordinary
8 circumstances as justice requires. The conditions of remission may include payment
9 of expenses incurred for enforcement of the forfeiture and for securing the return of
10 the defendant to custody.

11 (5) Exoneration. When the conditions of the bond have [HAS] been
12 satisfied or the forfeiture thereof has been remitted, the court shall exonerate the
13 obligors and release any bail. A surety may be exonerated by a deposit of cash in the
14 amount of the bond or by a timely surrender of the defendant into custody.

15 (6) Enforcement. Execution shall issue on judgments of forfeiture in
16 the same manner as on other judgments for the payment of money.

17 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section
18 to read:

19 CONDITIONAL EFFECT. Sections 5, 6, and 8 of this Act take effect only if sec. 8
20 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
21 Constitution of the State of Alaska.

22 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section
23 to read:

24 APPLICABILITY. (a) Sections 1 - 3, 5, and 6 of this Act apply to offenses
25 committed on or after the effective date of this Act. However, the underlying offense for
26 which a person is on release before trial, sentence, or service of sentence may occur before,
27 on, or after the effective date of this Act.

28 (b) Section 4 of this Act applies to custodians appointed and performance bonds
29 posted on or after the effective date of this Act. However, offenses that give rise to the
30 appointment of a custodian or the posting of the performance bond may occur before, on, or
31 after the effective date of this Act.

1 (c) Sections 6 and 8 of this Act apply to acts that require or allow forfeiture of
2 security that occur on or after the effective date of this Act. However, offenses that give rise
3 to the giving or pledging of security may occur before, on, or after the effective date of this
4 Act.

5 (d) Section 7 of this Act applies to actions occurring before, on, or after the effective
6 date of this Act.

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 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.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 15, 2000

The Hon. Pete Kott
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801

Re: HB 368 (Release of Criminal Defendant)

Dear Representative Kott:

House Bill 368, introduced February 11, 2000, has been referred to the House Judiciary Committee. I am writing to request that the bill be scheduled for a hearing at your earliest convenience.

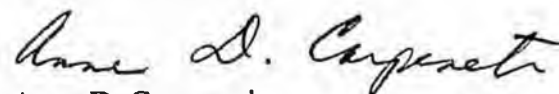
Most people charged with a criminal offense are released before trial, and often persons found guilty of a crime are released pending sentencing. The courts, in addition to bail, require the person to abide by rules, or conditions, of release. The safety of victims often depends on the person abiding by these conditions. This bill gives the courts and law enforcement important tools to encourage people to abide by conditions. The bill adopts the offense of violating conditions of release. The municipalities of Anchorage and Juneau have both found similar ordinances very useful in enforcing conditions of release. The bill clarifies the law by specifically providing for performance bonds. It also specifically provides that a third party custodian may be held in contempt for failing to notify the court that the person in their custody has violated release conditions. The bill further clarifies the law by specifically authorizing courts to order a defendant to serve a sentence at a later date.

Thank you for your consideration of this request. If you have any questions or need more information, please feel free to call me at any time.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Anne D. Carpeneti
Assistant Attorney General

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL
OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

FISCAL NOTE

No: 3

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..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
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 Federal 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: 2/11/00

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

COMMITTEE COPY

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 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. #0694

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

FISCAL NOTE

No: 1

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 Appeals/Special Litigation
Sponsor	Rules Committee	Component No.	2198-99;2201/03/61/79
Requester	Governor		

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)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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 <i>Joan M. Kasson</i>	Phone 465-5370
Division	Attorney General's Office	Date/Time 2/3/00, 10:07 AM
Approved by Commissioner	<i>Bob M. Betelbo</i> Bob M. Betelbo, 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

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.

HB 368

TONY KNOWLES
GOVERNOR
governor.alaska.gov

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 11500
Juneau, Alaska 99801-0000
(907) 465-7500
Fax (907) 465-3512
www.governor.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 violations;
- 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

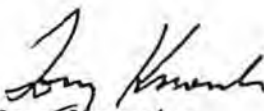
Performance Bonds. The bill clarifies the law by specifically authorizing the court to order the accused to post a performance bond, and requires that the court forfeit the security if the person violates a condition of no contact with the victim or witness in a proceeding. The court may forfeit the 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