

HB

368

FISCAL NOTE

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

STATE OF ALASKA
 2000 LEGISLATIVE SESSION

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 2003	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						
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CHANGE IN REVENUES ()						
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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: 2/7/00

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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						
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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

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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 and ... to the offense of violation of conditions of release ..."	BRU	Criminal Division
Sponsor	Rules Committee	Component	1st-4th Judicial Districts: Criminal 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						
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CHANGE IN REVENUES ()						
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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 *Joan M. Kasson*
 Division: Attorney General's Office
 Approved by Commissioner: Bob M. Betsko *Bob M. Betsko*
 Agency: Department of Law

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

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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.

FRED'S BAIL BONDING

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

Re. HB 368

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

STATE OF ALASKA

April 17, 2000

DEPARTMENT OF LAW

The Hon. Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 30
Juneau, Alaska 99801

CRIMINAL DIVISION

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL
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OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2084
PHONE: (907) 269-6250
FAX: (907) 269-6270

Re: CSHB 368 (JUD) am

Dear Senator Taylor:

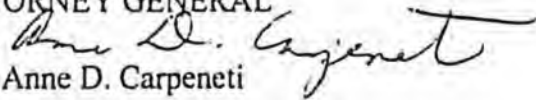
Committee Substitute for House Bill 368 (JUD) am passed the Alaska House of Representative on April 14, 2000, with a vote of 34 to 0 for passage. It has been assigned to the Senate Judiciary Committee. I am writing to request that the bill be scheduled at your earliest convenience.

Most people charged with a crime are released before trial, and often persons convicted are released before sentence is imposed or awaiting appeal. The courts, in addition to setting bail to insure the person appear when required, often require the person to abide by conditions of release. The safety of the victims often depends on the person abiding by these conditions. The referenced bill gives courts and law enforcement important tools to encourage people to abide by conditions. The bill adopts a class A misdemeanor for violating conditions of release – 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. The municipalities of Anchorage and Juneau have found similar ordinances very useful in enforcing conditions of release.

The bill specifically allows the court to impose performance bonds. Although the courts have used this tool for many years, the Alaska Court of Appeals recently held that because there is no specific statutory authority for performance bonds, and they may not be used. The bill also specifically provides that a third party custodian may be held in contempt for failing to notify the court that a person in their custody has violated release conditions. Additionally, CSHB 368 (JUD) am clarifies that the court has statutory authority to order a defendant to report to serve a sentence at a date after the sentence is imposed.

Thank you for your consideration of this request.

Sincerely,
BRUCE M. BOHELHO
ATTORNEY GENERAL


By: Anne D. Carpeneti
Assistant Attorney General

CSHB 368 (JUD)
RELEASE OF DEFENDANTS

- ▶ **PURPOSE:** Allow release of defendants before trial or imposition of sentence, or pending appeal, and at the same time protect victims and the public by giving courts tools to enforce conditions of release;

- ▶ **Third party custodians:** Allows third party custodians who have promised the court to immediately report any violation of release conditions to authorities to be held in contempt if the defendant violates the conditions, the custodian knows about it, and the custodian fails to report the violation immediately;

- ▶ **Performance bonds:** Allows the court to order a defendant to pay money into the registry of the court, to be returned if the defendant abides by conditions of release. If the defendant fails to abide by release conditions, the money must be forfeited if the defendant violated a condition by contacting a victim or witness; and may be forfeited if the defendant violates another condition, such as drinking alcohol after being ordered to abstain from alcoholic beverages;

- ▶ **Misdemeanor for violation of condition of release:** Makes it a crime to violate a condition of release (a class A misdemeanor if the person is charged with a felony; a class B misdemeanor if the person is charged with a misdemeanor). Both the MOA and the CBJ have similar misdemeanors, and both say it is a good tool to encourage defendants to obey release conditions. (Note: it is already a felony to fail to appear in connection with a felony charge, and a misdemeanor to fail to appear for a misdemeanor);

- ▶ **Reporting to jail at time after sentencing:** Provides the statutory authority for the current practice of ordering a defendant to report to serve a term of imprisonment at a date after sentence is imposed;

- ▶ **Return of forfeited security:** Amends the court rule to provide that property forfeited for failure to appear or other violation may be returned if the violation was due to circumstances beyond the control of the defendant or, if the defendant had contact with a victim or witness in violation of a condition, the contact was not knowing or intentional on the defendant's part.