

HB

328

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
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Heather M. Nobrega
Counsel to Committee

HB 328 was rolled into
HB 350.

From the Dept. of Law
Adopted as Amended

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 328

Page 1, following line 4:

Insert new bill sections to read:

* **Section 1.** AS 11.31.120(i)(2) is amended to read:

(2) "serious felony offense" means an offense

(A) against a person under AS 11.41, punishable as an unclassified or class

A felony; [OR]

(B) involving controlled substances under AS 11.71, punishable as an unclassified, class A or class B felony;

(C) that is damaging an oil or gas pipeline or supporting facility under

AS 11.46.470;

(D) that is terroristic threatening in the first degree under

AS 11.56.807; or

(E) that is criminal mischief in the first degree under AS 11.46.480.

* **Sec. 2.** AS 11.41.100(a) is amended to read:

(a) A person commits the crime of murder in the first degree if

(1) with intent to cause the death of another person, the person

(A) causes the death of any person; or

(B) compels or induces any person to commit suicide through duress or deception;

(2) the person knowingly engages in conduct directed toward a child under the age of 16 and the person with criminal negligence inflicts serious physical injury on the child by at least two separate acts, and one of the acts results in the death of the child;

[OR]

(3) acting alone or with one or more persons, the person commits or attempts to commit a sexual offense against or kidnapping of a child under 16 years of age and, in the course of or in furtherance of the offense or the immediate flight from that offense, any person causes the death of the child; in this paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470;

(4) acting alone or with one or more persons, the person commits or attempts to commit damaging an oil or gas pipeline facility under AS 11.46.470 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants;

or

(5) acting alone or with one or more persons, the person commits terroristic threatening in the first degree under AS 11.56.807 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants.

Page 4, line 7:

Following “containing”:

Insert “a biological and chemical substance or”

Page 4, lines 13 - 15:

Delete all material and insert:

“(b) In this section

(1) “a chemical or biological substance” means a material that is harmful to the health of a person;

(2) “an imitation chemical or biological substance” means a material that by its appearance or by representations would lead a reasonable person to believe that it is harmful to the health of a person.”

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 328
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January 14, 2002

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 would increase the criminal penalties for certain acts of terrorism and would prohibit the mailing of imitation substances with the intent to frighten people or cause other specified harm. This proposal is part of a package of six bills I am presenting to the Legislature today regarding terrorism prevention and emergency response.

The bill proposes the following criminal penalties:

- Intentional damage of an oil or gas pipeline or supporting facility would be raised to a class A felony (from the current class B felony);
- Unlawful tampering with an oil or gas pipeline or supporting facility would be raised to a class B felony (from a class C felony);
- Unlawful tampering with an airplane or helicopter would be raised to a class B felony (from a class C felony);
- Unlawful tampering with water, including a public or private water supply, with intent to cause physical injury would be the same level of crime as tampering with a food, drug, or cosmetic - a class B felony;
- Sending or attempting to send an imitation biological or chemical substance with intent to frighten people or cause other specified harm would be a class B felony. (Current law provides for either a class C felony or no criminal charge, depending on the circumstances.);

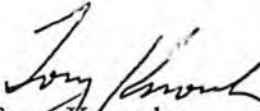
The Honorable Brian Porter

Page 2

- Making a false report under certain circumstances regarding the sending or presence of a harmful biological or chemical substance, or a false report threatening damage to an oil or gas pipeline or supporting facility would be established as a class C felony.

It is unfortunate that recent tragedies and ensuing upheavals in our country make these measures very important. I urge your prompt and favorable action on this bill.

Sincerely,


Tony Knowles
Governor

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

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

February 8, 2002

FEB 0 2002

Honorable Norman Rokeberg
Chair, House Judiciary Committee
State Capitol
Room 13
Juneau, AK 99801-1182

Re: HB 328

Dear Chairman Rokeberg:

I am writing to request that you schedule House Bill 328 for a hearing in the House Judiciary Committee. HB328 would increase criminal penalties for certain acts of terrorism and would prohibit the mailing of imitation substances with the intent to frighten people or cause other specified harm.

The bill proposes the following changes:

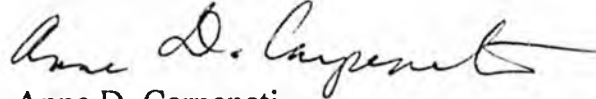
- Intentional damage of an oil or gas pipeline or supporting facility would be raised to a class A felony (from the current class B felony);
- Unlawful tampering with an oil or gas pipeline or supporting facility would be raised to a class B felony (from a class C felony);
- Unlawful tampering with an airplane or helicopter would be raised to a class B felony (from a class C felony);
- Unlawful tampering with water, including a public or private water supply, with intent to cause physical injury would be the same level of crime as tampering with a food, drug, or cosmetic - a class B felony;

- Sending or attempting to send an imitation biological or chemical substance with intent to frighten people or cause other specified harm would be a class B felony. (Current law provides for either a class C felony or no criminal offense, depending on the circumstances.);
- Making a false report under certain circumstances regarding the sending or presence of a harmful biological or chemical substance, or a false report threatening damage to an oil or gas pipeline or supporting facility would be established as a class C felony.

These provisions will be very useful to law enforcement if acts of terrorism reach our shores. If you have any questions please call me. Thank you for your consideration of this request.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Anne D. Carpeneti
Assistant Attorney General

BMB:ADC:vr

HOUSE BILL 328
SECTIONAL ANALYSIS
From the Dept. of Law

House Bill 328 addresses threats and terroristic acts by increasing the level of offense for certain acts, and adding new provisions to the criminal code. The bill proposes raising the consequences of harming an oil or gas pipeline or supporting facility from the current levels. Intentionally damaging an oil or gas pipeline or supporting facility is currently a class B felony; the bill raises this conduct to a class A felony. There is a similar increase in recklessly tampering with an oil or gas pipeline or supporting facility from a class C to a class B felony.

The bill also adds new provisions to Title 11. Terroristic threatening in the first degree prohibits sending imitation substances that appear to be harmful to a person with intent to cause serious disruption or fear of physical injury. The bill also adds tampering with a person's water supply with the intent to cause physical injury to criminal mischief in the first degree. Current law prohibits tampering with food, drugs, or cosmetics with the intent to cause physical injury. Additionally, making a false threat to damage an oil or gas pipeline is added to the criminal code as a class C felony.

Section 1 is a conforming amendment that adds terroristic threatening in the first degree as a predicate offense, along with other crimes including terroristic threatening in current law, that would raise the offense of stalking in the second degree to stalking in the first degree.

Section 2 makes it a class A felony to intentionally damage an oil or gas pipeline or supporting facility. Under current law, this offense is a class B felony.

Section 3 amends criminal mischief in the first degree (a class B felony) in two ways: First, it adds the prohibition of tampering with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm or loss to property. Under current law, this conduct is a class C felony. Second, it prohibits tampering with water or a container for water, or delivering or distributing water, knowing that it has been tampered with, with the intent to cause physical injury to another person.

Sections 4 and 5 make conforming amendments to the definitions of "deliver" and "distribute" for criminal mischief in the first degree, to add the delivery or distribution of water to the definitions.

Section 6 makes a conforming amendment to making a false information or report in violation of AS 11.56.800(a) to exclude conduct that arises to terroristic threatening in the second degree.

Section 7 adopts the crime of terroristic threatening in the first degree, that prohibits sending or delivering, or attempting or soliciting the sending or delivery of an imitation biological or chemical substance with the intent to place another in fear of physical injury to any person, cause the evacuation of a building or other facility, or cause serious public inconvenience. This is a class B felony.

Section 8 changes the current terroristic threatening to the second degree offense, and adds the prohibition of making a false report with the intent to cause an evacuation of a public place, business premises, or means of public transportation. It also adds the prohibitions of making a false report that claims that a biological or chemical substance harmful to a person's health has been sent or is present in specified places, or that threatens damage to an oil or gas pipeline or supporting facility.

Section 9 adds the definition of "oil or gas pipeline or supporting facility" to terroristic threatening in the second degree.

Section 10 is a conforming amendment that adds terroristic threatening in the first degree to those crimes that allow for the victim's or witness's address and telephone number to be kept confidential from the defendant if the court finds that the defendant may be a continuing threat to the victim or witness.

Section 11 makes a conforming amendment that adds terroristic threatening in the first degree to those crimes that may potentially be a crime involving domestic violence.

Section 12 repeals the provision in criminal mischief in the second degree for conduct that was added to criminal mischief in the first degree (tampering with an oil or gas pipeline).

Sections 13 and 14 are applicability and effective date clauses.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 328
(H) Publish Date: 1/16/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title "An act relating to terrorism criminal penalties..." BRU Legal and Advocacy Services
Component Public Defender Agency
Sponsor Rules
Requester _____ Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would increase the penalty for intentionally damaging an oil or gas pipeline or supporting facility from a class B to class A felony. It would also add a higher degree to the crime of Terroristic Threatening (from class C to class B felony) for sending, delivering or attempting or soliciting to send or deliver an envelope, package or item containing an imitation biological or chemical substance with the intent to place a person in fear of physical injury or cause evacuation or serious public inconvenience. The Public Defender Agency believes this bill will have minimal fiscal impact on the Agency.

Prepared by: Barbara Brink, Director Phone (907) 334-4416
Division: Public Defender Agency Date/Time 1/11/02 9:32 AM
Approved by: Jim Duncan, Commissioner Date 1/11/2002
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 328
 (H) Publish Date: 1/16/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "... to the crimes of damaging an oil and gas BRU Criminal Division
pipeline ... criminal mischief and terroristic threatening ..." 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 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill increases criminal penalties for acts of terrorism and adopts a class B felony offense for sending an imitation biological or chemical substance with the intent to frighten people. Specifically, the crime of intentionally damaging an oil or gas pipeline or supporting facility is raised to a class A felony from the class B felony under current law. Tampering with an oil and gas pipeline or supporting facility is raised to a class B felony from the class C felony under current law. The bill further provides that tampering with a water supply with intent to cause physical injury is the same level of crime (class B felony) as tampering with food or drugs, and makes it a class B felony to send or attempt to send an imitation biological or chemical substance with intent to frighten people or cause serious public inconvenience; depending on the circumstances. Under current law this would either not be a crime or it could be a class C felony.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by: Kathryn Daughhetee for Bruce M. L. ...elho, Attorney General
 Agency: Department of Law

Phone (907) 465-5370
 Date/Time 1/10/02 8:55 AM
 Date 1/10/2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 328

ANALYSIS CONTINUATION

The Department of Law does not anticipate a significant fiscal impact from passage of this legislation. Because these are felony-level crimes that would be prosecuted under current law, the sections of the bill that increase penalties would not increase the department's workload. The new provisions that address imitation anthrax or other biological or chemical scares, and increase the penalty for tampering with the water supply from a misdemeanor to a felony, do represent potential new workload. However, the department is optimistic that few of these prosecutions will be required.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 328
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title "An Act relating to the crimes of dama BRU Administration and Operations
an oil or gas pipeline or supporting facility, Component All
Sponsor Rules Committee
Requester House Judiciary Committee Component No. 694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to increase the criminal penalties for certain acts of terrorism, including intentional damage or unlawful tampering of an oil or gas pipeline, airplane or helicopter, or water, food and drug supplies. Additionally, it prohibits sending imitation biological or chemical substance with the intent to frighten people or cause other harm.

It is very difficult to predict the potential impact of the increased sanctions on the Department of Corrections. The specific and unusual nature of the crimes will hopefully result in an insignificant number of offenders that fit into these categories. Any increase in sanctions results in an impact on the DOC, thus we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 564-4652
Division Commissioner's Office Date/Time 1/23/02 4:21 PM
Approved by: Margaret Pugh Date 1/23/02
Agency Commissioner, Dept. of Corrections