

SB

216

HFIN

FILE

REPORTED OUTCOME

STATE OF ALASKA
2005 LEGISLATIVE SESSION

HFC 4/20/06

Fiscal Note Number: 1
Bill Version: CSSB 216(JUD)
(S) Publish Date: 3/1/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title: "An act relating to bail restrictions." RDU: Institutional Facilities
Component: Institution Director's Office
Sponsor: Senator Huggins & Green
Requester: Judiciary, Finance Component No: 524

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections does not anticipate a significant fiscal impact due to the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director Phone: 465-3339
Division: Administrative Services Date/Time: 2/27/06 4:26 PM
Approved by: Portia C.K. Parker, Deputy Commissioner Date: 2/27/2006
Agency: Department of Corrections

adopted 4/20

gm

24-LS1300\S
Luckhaupt
4/19/06

HOUSE CS FOR CS FOR SENATE BILL NO. 216()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS HUGGINS AND GREEN, Dyson, Seekins, Wagoner, Gary Stevens, Cowdery, Bunde, Stedman

REPRESENTATIVE Stoltze

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to bail and unlawful evasion; and providing for an effective date."

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

3 * Section 1. AS 11.56.310(a) is amended to read:

4 (a) One commits the crime of escape in the second degree if, without lawful
5 authority, one

6 (1) removes oneself from

7 (A) a correctional facility while under official detention;

8 (B) official detention for a felony or for extradition, or

9 (C) official detention and, during the escape or at any time

10 before being restored to official detention, one possesses on or about oneself a
11 firearm;

12 (2) violates AS 11.56.335 or 11.56.340 [AS 11.56.340] and, during the
13 time of the unlawful evasion or at any time before being restored to official detention,

14 one possesses on or about oneself a firearm; or

15 (3) removes, tampers with, or disables the electronic monitoring

1 equipment, or leaves one's residence or other place designated by the commissioner of
2 corrections for the service by electronic monitoring of official detention for a felony.

3 * Sec. 2. AS 11.56.320(a) is amended to read:

4 (a) One commits the crime of escape in the third degree if one

5 (1) removes oneself from official detention during any lawful
6 movement or activity incident to confinement within a correctional facility for a
7 misdemeanor; or

8 (2) violates AS 11.56.335 or 11.56.340 [AS 11.56.340] and leaves or
9 attempts to leave the state.

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

11 **Sec. 11.56.335. Unlawful evasion in the first degree.** (a) A person commits
12 the crime of unlawful evasion in the first degree if, while charged with or convicted of
13 a felony,

14 (1) the person fails to return to official detention within the time
15 authorized following temporary leave granted for a specific purpose or limited period,
16 including leave granted under AS 33.30.181; or

17 (2) while on furlough under AS 33.30.101 - 33.30.131, the person fails
18 to return to the place of confinement or residence within the time authorized by those
19 having direct supervision.

20 (b) Unlawful evasion in the first degree is a class C felony.

21 * Sec. 4. AS 11.56.340 is amended to read:

22 **Sec. 11.56.340. Unlawful evasion in the second degree.** (a) A person
23 commits the crime of unlawful evasion in the second degree if, while charged with or
24 convicted of a [FELONY OR A] misdemeanor,

25 (1) the person fails to return to official detention within the time
26 authorized following temporary leave granted for a specific purpose or limited period,
27 including leave granted under AS 33.30.181; or

28 (2) while on furlough under AS 33.30.101 - 33.30.131, the person fails
29 to return to the place of confinement or residence within the time authorized by those
30 having direct supervision.

31 (b) Unlawful evasion in the second degree is a class A misdemeanor.

1 * Sec. 5. AS 12.30.010 is amended to read:

2 **Sec. 12.30.010. Bail before or after conviction.** The defendant in a criminal
3 proceeding is entitled to be admitted to bail before conviction as a matter of right if the
4 alleged victim can be reasonably protected through the imposition of bail and
5 conditions of release. The defendant in a criminal case may be admitted to bail
6 after conviction only as permitted under AS 12.30.040. However, nothing in this
7 chapter allows a court to order a defendant who has not satisfied bail to be
8 released temporarily or periodically, either before trial or after conviction unless

9 (1) the defendant is charged with a misdemeanor or class B or C
10 felony;

11 (2) the temporary release is because of the

12 (A) death of an immediate family member of the defendant;

13 (B) birth of the defendant's child and the defendant has
14 executed an affidavit of paternity before the release;

15 (C) defendant's need for a mental health or substance abuse
16 assessment that the court finds cannot be accommodated in the facility or
17 telephonically; or

18 (D) defendant's need for a medical or dental exam required
19 for acceptance into a residential treatment facility; and

20 (3) the court solicits information from the Department of
21 Corrections regarding the defendant's conduct while incarcerated and considers
22 that information when making a decision under this subsection.

23 * Sec. 6. AS 12.30.010 is amended by adding a new subsection to read:

24 (b) If a court orders the temporary release of a defendant under (a) of this
25 section, the court shall order the defendant to appear in court during normal business
26 hours at the end of the period of temporary release and before the defendant is
27 returned to a correctional facility.

28 * Sec. 7. AS 33.30.141(b) is amended to read:

29 (b) The failure of a prisoner on a furlough to return to the place of
30 confinement or residence within the time specified by those having direct supervision
31 over the prisoner is an unlawful evasion under AS 11.56.335 or 11.56.340

- 1 [AS 11.56.340].
- 2 * Sec. 8. AS 12.30.020(b)(3) is repealed.
- 3 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 - Fax
Senator_Charlie_Huggins@legis.state.ak.us



State Capitol, Room 417
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

www.akrepublicans.org/huggins/

Charlie Huggins
Senator

Senate Bill No. 216 Sponsor Statement

"An Act Relating to bail, temporary release, and unlawful evasion."

Currently, there are loopholes in our judicial system that has unfortunately been taken advantage of by harmful individuals. A prime example of this exploitation occurred on Oct. 13, 2005, when a Mat-Su Valley judge released a man with five felony charges pending against him, including burglary, kidnapping and assault. The accused individual had already been denied affordable bail, had escaped from a temporary release as a minor and was, without a doubt, a flight risk on October 13, 2005. On October 14, 2005, the accused escaped from his mother's custody while attending his father's funeral. When he was captured several weeks later, he was baby-sitting a child while in possession of two stolen handguns. Senate Bill 216 will fix the loopholes in our judicial system that make escapes possible, such as the one described.

Senate Bill 216 Changes the punishment for unlawful evasion. Currently unlawful evasion is a misdemeanor. As one could imagine, the threat of being charged with a misdemeanor when one has several felonies pending is not very intimidating. This bill would enable the state to charge unlawful evaders on an equal basis with their pending charges, i.e., someone charged with a misdemeanor would be charged with another misdemeanor and someone charged with a felony would be charged with another felony.

Senate Bill 216 also amends AS 12.30.010 to disallow temporary and periodic releases. Temporary and periodic releases are neither necessary, nor are they favored in the Correction system. These releases simply provide the means to potentially put our families and neighbors at risk by these individuals who have already been denied affordable bail because of flight risk assessment.

The previously described case is not the only example of an escape from temporary release. In fact, during the same month of October, three other people also escaped while on temporary release. This is a very costly burden for the State of Alaska, but more importantly, it can lead to serious and potentially harmful risks for the residents of Alaska.

This bill will help ensure the safety of our property, our neighbors, and our children.

Contact: Josh
Tempel
Staff to Senator Charlie Huggins
465-3878

Version 24-
LS1300L

Karen Sawyer

From: jaime chew [j4chew@mtaonline.net]
 Sent: Friday, October 21, 2005 7:39 AM
 To: Sen. Charlie Huggins; Rep. Mark Neuman
 Subject: Palmer District court
 Follow Up Flag: Follow up
 Flag Status: Red

Mr. Huggins & Mr. Neuman-

I am writing as an appalled citizen of the Big Lake community. After discovering Sunday that there was a violent criminal "on the loose" after cutting his ankle bracelet while allowed out of custody to attend his father's memorial service, I am stunned, shocked, and scared. I moved to the "valley" 5 years ago and since I have seen repeated failures by the Palmer District Court and the prosecutors' office. However until recently I have not been angered enough to take action. This inaction must stop!

The true "story" is not that John Pearl Smith escaped, he was allowed to leave. Judge Beverly Cutler allowed a dangerous criminal, accused of many offenses involving a gun, out of custody of the department of corrections. Despite Smith's history of attempted escape, and apparently he was successful at escaping as a juvenile where he remained "at large" for 3 days after beating up a guard, Cutler allowed him to attend the memorial without any guards, shackles, or search of his person, all typical requirements by the Department of Corrections as stated in their policies. The policies in place are for just this situation, why were the policies not enforced?

The prosecutors' office said *"the court did a very fine job in narrowing what he could do, and showing a level of mercy that I think the average citizen wants our court system to show."* Richard Payne, assistant D.A, didn't know why the court didn't have a corrections officer, rather than a family member, escort Smith. Isn't it his job to know why, or to at least request that guards accompany this dangerous man? Where was the representation for the people of the State of Alaska in that courtroom? The prosecutors' office didn't represent the people of the state of Alaska because they are so far out of touch with what the "average citizen" expects from their judges and prosecutors' that they believe they did the right thing despite the results of an online poll by the frontiersman where only 3% agreed with the decision.

Continually the courts and prosecutors within the Palmer District Court system, fail to make the safe and responsible decisions. We have yet to hear any comment from Beverly Cutler, who was appointed in the early 80's, as to why she did not follow the policies in place. How do we hold her accountable? As "the average citizen" I feel that the justice system seems so large, too large to battle alone, I am asking your help to bring attention to this matter. I have discussed this issue with a prosecutor and senior officers with the State Troopers and they have all agreed it is their opinion that this would not have been allowed to happen in Anchorage. Anchorage judges continually hold their defendants to a higher standard. Why? Are the people living in Anchorage more deserving of protection? Are the people of "valley" just more.... "Valley trash"?

I am a mother of 2 small children, a wife, a business owner, a volunteer and a scared citizen of the Mat-Su valley. Our area has grown over the last 5 years that I have lived here, can our justice system grow with it? The people of our community deserve the same standard that Anchorage citizens are entitled to, in fact the people of our community are the same people that were living in Anchorage 5 years ago. Again, the area is growing, let our ideas and our judicial system's outlook evolve with it. Would you please let me know how you feel in regards to this issue, where can we take this matter for attention, as only the Anchorage daily news has covered this part of the story? I look forward to your response.

Jaime Chew

TM CALASKA, INC.
 (907)892-3500

2/22/2006

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Shalese M. Primrose

6029 Debarr Road, Apt. 202, Anchorage, AK 99504
(907) 440-0314 cell or (907) 258-7555 work

District Attorney's Office
Attn: Suzanne Powell
11921 Palmer Wasilla Highway
Suite 100
Palmer, AK 99645

RECEIVED

OCT 31 2005

RE: CASE NO. 3PA-05-02346CR & 3AN-04-04465CR

Department of Corrections
Commissioner's Office

October 24, 2005

To Whom It May Concern:

I have contacted the following agencies in connection to a person who is out on third party and out of compliance with the Dept. of Corrections for more than two weeks. I believe he was released on Friday, October 14, 2005 or Friday, October 7, 2005 from the Mat-Su Pretrial Facility in Palmer.

Anchorage Police Department (referred by APD to Alaska Court System)

Magistrate's Office at the Alaska Court System (left Mike's whereabouts on the answering machine since no one answers that line - upon calling back a few days later I was told that I had to contact the Prosecutor's office)

Municipal Prosecutor's Office in Anchorage (MPA's office referred me to Palmer DA's office)

District Attorney's Office in Palmer, Alaska (DA's office told me I have to wait a week to speak with a paralegal that is out on leave - week of 10/17/05)

MADD in Anchorage (MADD told me the Alaska State Troopers would probably be very responsive 10/24/05)

Alaska State Troopers (told me they wouldn't do anything if there isn't a warrant which means there apparently isn't one since they told me they didn't need any information from me as of 10/24/05)

Mike was out of jail on a third-party pass to get a drug rehabilitation evaluation when he ran from his third-party custodian (his sister, who *did* report that he took off on her). He is now staying with his girlfriend, Donna Susook at 1731 Beaver Street in Anchorage, AK. Donna works for Joann Fabrics in the Northway Mall at night. Her home phone number is: 332-1781.

I drove past the place where Mike is staying to write down the license plate numbers of the vehicles that belong to him. I have personally witnessed him driving a burgundy minivan with wood paneling (he passed me driving this vehicle three times in one day), although I was unable to get the license plate number since he is always driving it. I will attempt to obtain that license number without bringing attention to myself in the process. The blue and white Chevy Blazer that is in the driveway at that location has a license plate number of DXZ-997. These vehicles are probably registered still under the previous owner or his sister's name: Christina Osness. He also has other cars on his property in Big Lake, including a Chevelle.

Nobody seems concerned that Mike is out driving or that he ran from the law. I personally don't want him anywhere near me or our child. My three-year-old is afraid of him and I also understand that he has physically threatened his 15-year-old son who consequently ran away from home. Since I personally know him and many mutual friends, I know that Mike is doing

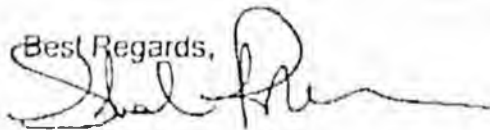
drugs and drinking and it will be no time at all (if it isn't happening already) until he is on the road drinking again. Michael J. Osness (born 7/16/70) was incarcerated for his third DWI and other offenses that he was out of compliance with including driving while license suspended. When he was last arrested he was already under an agreement to turn himself in November 1st to take care of time he had left to serve on a previous conviction.

I do not wish to have my name mentioned in relation to his arrest when the warrant is issued for him, because I fear retaliation on his part. He threatened me many times when I filed for child support and it is obvious that he doesn't care about anyone but himself; and never will. I reopened my child support case while he was incarcerated, hoping that the state can eventually seize his assets since it is not his intention to provide financial or emotional parenting. I live in a security building and do not wish to have any trouble. I supported Mike's rehabilitation and his goals for almost 4 years, but when drugs and alcohol became too oppressive in our relationship, and his behavior became more violent, I broke things off.

I previously wrote positive letters into the Department of Corrections on his behalf since I had me convinced at the time that he was trying to change. Since then he threatened us, he hurt our two-year-old son, he put holes in the walls in my home, he broke every item of mine that he could get his hands on and now he drives by us while we're walking our puppy like it's all in fun. I don't have a restraining order since I don't believe they are much help. I have a small sense of security living in a security building and there are 24-hour security patrols as well. All I can do is hope that Mike is picked up and during the time he is in jail can sober up enough to realize what deep-seeded problem he has. If not, it may be 3-5 years I do not have to worry about a run-in with him.

I am only hoping that I don't have to go any farther than this to get the State of Alaska to issue a warrant for Mike's arrest and swiftly resolve this matter.

Best Regards,



Shalese M. Primrose

CC: Anchorage Police Department, Attn: Warrants Department
MADD, Anchorage Office
Municipal Prosecutor's Office, Anchorage
Alaska State Troopers, Attn: Warrants Department
Dept. of Corrections, Office of the Commissioner (Juneau & Anchorage)

Escapee found in home east of Wasilla

BABY-SITTING: Police believe friends may have helped fugitive during flight.

By KYLE HOPKINS
Anchorage Daily News

(Published: October 23, 2005)

WASILLA -- Valley fugitive John Pearl Smith, who fled custody while attending a memorial service for his father, was caught Friday night while in possession of two stolen guns and baby-sitting a young boy at a house off Fairview Loop.

Investigators said they suspect Smith, a 19-year-old who cut the ankle monitor used to track him while he attended the Butte service on Oct. 14, eluded capture for a week with the help of friends and acquaintances. Smith, staring down at his cuffed hands, was arraigned Saturday in Palmer on charges of violating the conditions of his release and criminal mischief.

On the day of the service, he had been released by a judge into the custody of his mother for a few hours. He was then supposed to return to custody in the Mat-Su Pre-Trial Facility.

Instead, his mother says Smith ran while she was in the bathroom. Authorities said Saturday they aren't sure exactly what he's been up to, but he seemed well taken care of said trooper Vic Aye, a member of the Alaska Fugitive Task Force that captured Smith Friday.

"He got his food. He got showered," Aye said. "He was obviously staying with people."

Smith's mother, Christine Ace, said Saturday she's relieved to see her son back in custody. His escape upset the family, and Ace thinks police suspected her of aiding and abetting her son, which she denied.

"I'm just pissed off at him," she said.

Headed by the U.S. marshals, the fugitive task force is charged with hunting down criminals on the run. Members spent much of the last week interviewing more than 30 people in the Mat-Su, from the core area of Palmer and Wasilla to Trapper Creek, in search of Smith.

Aye said investigators suspected Smith was in the Butte or Pittman Road areas, but as part of their routine interviews Friday, they headed to the house of one of Smith's acquaintances at Michelle Lane, off Fairview Loop.

Near the house, about 9:30 p.m. Friday, they saw a small black pickup -- a vehicle they'd heard Smith might be using.



John Pearl Smith is arraigned Saturday in Palmer. Smith escaped a week ago after attending his father's memorial service. *(Photo by EVAN R. STEINHAUSER / Anchorage Daily News)*

Waiting in two unmarked cars, the task force called for backup, Aye said. Alaska state troopers and Wasilla police officers showed up, and about 9:30 p.m. one of the U.S. marshals talked to Smith over a loudspeaker: He was surrounded.

Aye said Smith surrendered peacefully after about 10 minutes.

"He claims he was going to turn himself in," Aye said. "But they all do. Every single one of them."

Troopers Sgt. Kathy Peterson, who took Smith's case when he first fled from custody, said the teenager when caught wore a black, hooded sweatshirt and blue jeans, his blond hair dyed black.

Inside the house, authorities found two stolen, semi-automatic handguns -- a 10 mm and .45-caliber. Also inside the home was an 8-year-old boy whom Smith was baby-sitting, Peterson said.

Investigators believe the boy lived in the home where Smith was found and may be the son of one of Smith's acquaintances.

Troopers continued sorting out details of the case Saturday afternoon, asking questions such as who actually owned the house, where exactly Smith got the handguns and who may have helped him.

Smith claimed he'd only been at the house a few hours, Aye said.

Peterson said anyone who aided Smith could face charges of hindering a prosecution, while Smith himself could be on the hook for gun theft.

This wouldn't be the first time Smith was accused of stealing weapons, or even the first time he's eluded his captors for days at a time.

Before he escaped last week, Smith was in the Mat-Su Pre-Trial Facility facing five separate felony cases, including burglary, robbery, vehicle theft, weapons misconduct and felony assault.

He escaped custody once before, at age 14. Accused of breaking into homes and snatching guns, Smith ran from authorities for three days after a court hearing in Palmer, troopers said in 2000.

He's now being charged with failure to meet the conditions of his release, rather than escape, because he was technically out on bond and not in custody for those few hours he attended his father's memorial service, Peterson said.

Though Department of Corrections policy sometimes requires escorts for inmates allowed on temporary leave, a Palmer Superior Court judge did not make that a requirement for Smith's release.

Aye, the task force investigator, said people asked him why that was all week, as Aye interviewed those who knew Smith and his criminal history.

"All of his friends say he was a powder keg waiting to go off," he said.

At noon Saturday, Ace stood outside her Palmer home wearing a blue sweater and blonde highlights in her short hair. Her keys hung from a ring peeking above the pocket of her jeans.

An hour later, her son was due to be arraigned in the nearby Palmer courthouse. Ace wasn't sure if she would go -- she'd been through this many times before, she said.

"He's deserving everything he gets," Ace said. She paused. "Doesn't mean I don't love him."

She grabbed cigarettes from the cab of a pickup and lit one in the driveway. Ace doesn't smoke in the house, she said. She talked about all the questions police asked over the past few days, and all the friends who called to say they'd been interviewed about John by investigators.

She took a quick drag from her cigarette. "Yup. Long week."

Contact reporter Kyle Hopkins at khopkins@adn.com or call 352-6710.

[Print Page](#)

[Close Window](#)

Copyright © 2006 The Anchorage Daily News (www.adn.com)