

**HB**

**296**

<TARGET><BILL>HB 296</BILL><SUBJECT>HB  
296</SUBJECT><COMM>HJUD27</COMM></TARGET>

**ALASKA STATE LEGISLATURE**  
**HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**  
**REPRESENTATIVE CARL GATTO, CHAIR**

**COMMITTEE MEMBERS:**  
REP. STEVE THOMPSON, VICE CHAIR  
REP. BOB LYNN  
REP. WES KELLER  
REP. LANCE PRUITT  
REP. LINDSEY HOLMES  
REP. MAX GRUENBERG



STATE CAPITOL BUILDING, RM 120  
JUNEAU, AK 99801-1182  
PHONE: 907-465-4990  
FAX: 907-465-2381  
HOUSE\_JUDICIARY@LEGIS.STATE.AK.US

**HOUSE BILL 296 ~ Sponsor Statement**  
**House Judiciary Committee**

**"An Act relating to service of process on prisoners; relating to the crime of escape; relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."**

HB 296, addresses ambiguities that have risen from recent court cases involving prisoner issues. It clarifies the permissible method of personally serving process on incarcerated prisoners. It also clarifies the second and fourth degree escape statutes. The bill does three things;

1. For the purpose of service of process on state prisoners HB296 references the definition of "correctional facility" in AS 33.30.901 to clarify the manner in which incarcerated prisoners can be served civilly while incarcerated. The bill also makes it clear that the statute setting for the procedure for personally serving incarcerated persons, AS 09.05.030, is an indirect amendment to Alaska Civil 4. These changes will ensure there is a standardized legal process for serving process on prisoners. It will cure the problem in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010), that caused the Alaska Supreme Court to hold that prison officials were not peace officers who could serve legal summons and complaints on incarcerated prisoners.

2. This bill also defines what constitutes the crime of escape in the second degree. The result in *Bridge v. State* 258 P.3d 923 (Alaska 2011) was suggested for Legislative review from the Legal Services Annual Report (Dec. 2011). *Bridge*, was charged with driving with a suspended license, a class A misdemeanor. He could not post bail and was therefore held in jail. He was then transferred to a halfway house. He left the facility without permission and was caught. As a result of the escape he was charged with escape in the second degree, a class B felony. The Alaska Court of Appeals found that although *Bridge* was in the custody of the Department of Corrections, he was not "confined", because the halfway house did not have staff whose duty it was to prevent prisoners from leaving. This bill defines escape in the second degree as being from a "secure correctional facility" while under detention for a misdemeanor. Further, a "secure correctional facility" is defined as using construction or security fixtures or officers or other persons that are authorized to prevent persons under detention from departing such facilities without unlawful authorization. Other escapes by misdemeanants are fourth degree escapes, a class A misdemeanor. This bill will

codify the holding in *Bridge* and will avoid future questions as to what constitutes escape in the second degree.

3. This bill deletes the repeal of provisions passed by the legislature in 2007, AS 12.55.100(f) and AS 33.16.150(g), requiring electronic monitoring as a special condition of probation or parole for offenders whose offense was related to a criminal street gang. Repealing the December 31, 2012 sunset date will continue to provide the court system and the Department of Corrections an important tool to keep neighborhoods safe from gang related crime.

This bill provides clearer guidelines for civil service of process of persons under the custody of the Department of Corrections removing question raised in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010). The bill refines escape in the second degree answering questions from *Bridge v. State* 258 P.3d 923 (Alaska 2011). This bill is necessary to avoid future litigation that may arise involving these issues.

Please contact Rep. Gruenberg's legislative aides, Miles Brookes or Ted Madsen, at 465-4940 with any questions.

**ALASKA STATE LEGISLATURE**  
**HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**  
**REPRESENTATIVE CARL GATTO, CHAIR**

**COMMITTEE MEMBERS:**  
REP. STEVE THOMPSON, VICE CHAIR  
REP. BOB LYNN  
REP. WES KELLER  
REP. LANCE PRUITT  
REP. LINDSEY HOLMES  
REP. MAX GRUENBERG



STATE CAPITOL BUILDING, RM 120  
JUNEAU, AK 99801-1182  
PHONE: 907-465-4990  
FAX: 907-465-2381  
HOUSE\_JUDICIARY@LEGIS.STATE.AK.US

**HB 296 - Crime of Escape & Definition of Correctional Facility**

**Sectional Analysis for CS for HB296 (27-LS1199\E)**

**Section 1**<sup>1</sup> adds a new subsection that defines a correctional facility for the purpose of AS 09.05.050 as a "prison, jail, camp farm, halfway house, group home, or other placement designated by the commissioner for the custody, care and discipline of prisoners (AS 33.30.901(4)).

**Section 2**<sup>2</sup> defines that escape from a "secure correctional facility" while under official detention for a misdemeanor is escape in the second degree, a class B felony.

**Section 3**<sup>3</sup> adds a new subsection to AS 11.56.310 defining a secure correctional facility.

**Section 4**<sup>4</sup> repeals Section 3, ch.27, SLA 2007

**Section 5**<sup>5</sup> amends Rule 4, Alaska Rules of Civil Procedure to reflect changes indirectly made in section 1 of this act.

**Section 6**<sup>6</sup> states that changes to sections 2 and 3 apply to offenses on or after the effective date of this act.

**Section 7**<sup>7</sup> provides for an immediate effective date.

---

<sup>1</sup> Page 1, Lines 5-7

<sup>2</sup> Page 1, Lines 8-14 through Page 2, Lines 1-9

<sup>3</sup> Page 2, Lines 10-18

<sup>4</sup> Page 2, Lines 19-23

<sup>5</sup> Page 2, Lines 24-29

<sup>6</sup> Page 2, Lines 30-31 through Page 3, Lines 1-5

<sup>7</sup> Page 3, Line 6

**ALASKA STATE LEGISLATURE**  
**HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**  
**REPRESENTATIVE CARL GATTO, CHAIR**

**COMMITTEE MEMBERS:**  
REP. STEVE THOMPSON, VICE CHAIR  
REP. BOB LYNN  
REP. WES KELLER  
REP. LANCE PRUITT  
REP. LINDSEY HOLMES  
REP. MAX GRUENBERG



STATE CAPITOL BUILDING, RM 120  
JUNEAU, AK 99801-1182  
PHONE: 907-465-4990  
FAX: 907-465-2381  
HOUSE\_JUDICIARY@LEGIS.STATE.AK.US

TO: Representative Bill Stoltze, Co-Chair  
Representative Bill Thomas, Co-Chair  
House Finance Committee

FROM: Representative Carl Gatto

DATE: February 24, 2012

RE: HB 296 Crime of Escape/Definition of Escape

\*\*\*\*\*

Please consider this memorandum as a request for House Bill 296 to be heard in the House Finance Committee. Accompanying this memo are the following documents:

- HB 296 (27-LS1199\D)
- CSHB 296 (JUD) (27-LS1199\E)
- Sponsor Statement
- Sectional Analysis
- Changes from previous version memo
- Fiscal Notes
  - o Department of Corrections (zero)
  - o Department of Law (zero)
  - o Department of Administration/Public Defender Agency (zero)
- Supporting Documents
  - o *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010)
  - o *Bridge v. State* 258 P.3d 923 (Alaska 2011)

Thank you for considering the Judiciary Committee's request for a hearing on HB 296. Please contact my legislative aide, Melanie Lesh, at 465-4990 or legislative aide to Rep. Gruenberg, Miles Brookes, at 465-4940 with any questions.

**ALASKA STATE LEGISLATURE**  
**HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**  
**REPRESENTATIVE CARL GATTO, CHAIR**

**COMMITTEE MEMBERS:**  
REP. STEVE THOMPSON, VICE CHAIR  
REP. BOB LYNN  
REP. WES KELLER  
REP. LANCE PRUITT  
REP. LINDSEY HOLMES  
REP. MAX GRUENBERG



STATE CAPITOL BUILDING, RM 120  
JUNEAU, AK 99801-1182  
PHONE: 907-465-4990  
FAX: 907-465-2381  
HOUSE\_JUDICIARY@LEGIS.STATE.AK.US

**HOUSE BILL 296 ~ Sponsor Statement**  
**House Judiciary Committee**

**"An Act relating to service of process on prisoners; relating to the crime of escape; relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."**

HB 296 addresses ambiguities that have risen from recent court cases involving prisoner issues. It clarifies the permissible method of personally serving process on incarcerated prisoners. It also clarifies the second and fourth degree escape statutes. The bill does two things;

1. For the purpose of service of process on state prisoners HB 296 references the definition of "correctional facility" in AS 33.30.901 to clarify the manner in which incarcerated prisoners can be served civilly while incarcerated. The bill also makes it clear that the statute relating to the procedure for personally serving incarcerated persons, AS 09.05.030, is an indirect amendment to Alaska Civil Rule 4. These changes will ensure there is a standardized legal process for serving process on prisoners. It will cure the problem in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010), where the Alaska Supreme Court held that prison officials were not peace officers who could serve legal summons and complaints on incarcerated prisoners.

2. This bill also defines what constitutes the crime of escape in the second degree. The result in *Bridge v. State* 258 P.3d 923 (Alaska 2011) was suggested for Legislative review from the Legal Services Annual Report (Dec. 2011). Bridge, was charged with driving with a suspended license, a class A misdemeanor. He could not post bail and was therefore held in jail. He was then transferred to a halfway house. He left the facility without permission and was caught. As a result of the escape he was charged with escape in the second degree, a class B felony. The Alaska Court of Appeals found that although Bridge was in the custody of the Department of Corrections, he was not "confined," because the halfway house did not have staff whose duty it was to prevent prisoners from leaving. This bill defines escape in the second degree as being from a "secure correctional facility" while under detention for a misdemeanor. Further, a "secure correctional facility" is defined as using physical restraints or fixtures to prevent movements or activities of persons under detention or officers or staff that are charged with preventing persons under detention from departing such facilities without unlawful authorization. Other escapes by misdemeanants are fourth degree escapes,

a class A misdemeanor. This bill will codify the holding in *Bridge* and will avoid future questions as to what constitutes escape in the second degree.

This bill provides clearer guidelines for civil service of process of persons under the custody of the Department of Corrections removing question raised in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010). The bill refines escape in the second degree answering questions from *Bridge v. State* 258 P.3d 923 (Alaska 2011). This bill is necessary to avoid future litigation that may arise involving these issues.

Please contact committee aide, Melanie Lesh, at 465-4990; or legislative aide Miles Brookes, at 465-4940 with any questions.

**ALASKA STATE LEGISLATURE**  
**HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**  
**REPRESENTATIVE CARL GATTO, CHAIR**

**COMMITTEE MEMBERS:**  
**REP. STEVE THOMPSON, VICE CHAIR**  
**REP. BOB LYNN**  
**REP. WES KELLER**  
**REP. LANCE PRUITT**  
**REP. LINDSEY HOLMES**  
**REP. MAX GRUENBERG**



**STATE CAPITOL BUILDING, RM 120**  
**JUNEAU, AK 99801-1182**  
**PHONE: 907-465-4990**  
**FAX: 907-465-2381**  
**HOUSE\_JUDICIARY@LEGIS.STATE.AK.US**

To: Representative Bill Stoltze, Co-Chair  
Representative Bill Thomas, Co-Chair  
House Finance Committee

From: Representative Carl Gatto, Chair  
House Judiciary Committee

Date: February 22, 2012

RE: Changes to HB 296 "Crime of Escape and Definition of Correctional Facility"

\*\*\*\*\*

The House Judiciary Committee adopted two amendments that clarify language for the purposes of this bill. Below is an outline of changes made since the bill was introduced;

- A new subsection under AS 11.56.310 Escape in the second degree, defines "secure correctional facility" as one that can restrict the ability of a person from leaving without lawful authority or has correctional officers to do so.
- A repeal of Section 3, ch. 27, SLA 2007, which sets December 31, 2012 as the repeal date for requiring electronic monitoring as a condition of probation and parole for offenders whose offense was related to a criminal street gang.

If you have any questions about amendments adopted in the committee substitute, please contact the Judiciary committee aide, Melanie Lesh, at 465-3743.

**ALASKA STATE LEGISLATURE**  
**HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**  
**REPRESENTATIVE CARL GATTO, CHAIR**

**COMMITTEE MEMBERS:**  
REP. STEVE THOMPSON, VICE CHAIR  
REP. BOB LYNN  
REP. WES KELLER  
REP. LANCE PRUITT  
REP. LINDSEY HOLMES  
REP. MAX GRUENBERG



STATE CAPITOL BUILDING, RM 120  
JUNEAU, AK 99801-1182  
PHONE: 907-465-4990  
FAX: 907-465-2381  
HOUSE\_JUDICIARY@LEGIS.STATE.AK.US

**Crime of Escape & Definition of Correctional Facility**

**Sectional Analysis for HB296 (27-LS1199\D)**

**Section 1)** adds a new subsection that defines a correctional facility for the purpose of AS 09.05.050 as a "prison, jail, camp farm, halfway house, group home, or other placement designated by the commissioner for the custody, care and discipline of prisoners (AS 33.30.901(4)).

**Section 2)** defines that escape from a "secure correctional facility" while under official detention for a misdemeanor is escape in the second degree, a class B felony.

**Section 3)** adds a new subsection to AS 11.56.310 defining a secure correctional facility.

**Section 4)** amends 11.81.900(b)(9) to further define a correctional facility as a prison, jail, camp, farm, halfway house, group home, holding facility or other placement used for housing persons under official detention.

**Section 5)** amends Rule 4, Alaska Rules of Civil Procedure to reflect changes indirectly made in section 1 of this act.

**Section 6)** states that changes to sections 2,3 and 4 apply to offenses on or after the effective date of this act.

**Section 7)** provides for an immediate effective date.

# FISCAL NOTE

STATE OF ALASKA cost # codes  
 2012 LEGISLATIVE SESSION

Bill Version CSHB 296(JUD)  
 Fiscal Note Number 1  
 Publish Date 2/17/12 (H)

Identifier (file name) HB296-DOC-OC-01-30-12 Dept. Affected DOC  
 Title "An Act relating to service of process on prisoners; relating to crime of escape; relating to definition of..." Appropriation Admin & Support  
 Allocation Commissioner's Office  
 Sponsor House Judiciary Committee  
 Requester House Judiciary Committee OMB Component Number 694

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required;  
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This is the original version of the bill.

Prepared by Leslie Houston, Director  
 Division Department of Corrections - Administrative Services  
 Approved by Joseph D. Schmidt, Commissioner  
Department of Corrections

Phone 907-465-3339  
 Date/Time 02/01/2012 7:00AM  
 Date 2/1/2012

FISCAL NOTE #1

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSHB 296(JUD)

**Analysis**

This legislation adds language to AS 11.56.301(a) inserting the word **secure** under (a)(1)(A) in the context of a **secure** correctional facility while under official detention; and, adds language to the end of (a)(1)(A) **for a misdemeanor**.

This legislation adds Section 3. AS 11.56.310 (c) "secure correctional facility" means (1) uses construction fixtures or other restraints designed to restrict physically the physical movements and activities of persons under official detention; or (2) employs correctional officers or other facility staff charged with preventing persons under official detention from departing the facility without lawful authorization.

The legislation also adds to the definition of "correctional facility" "a prison, jail, camp, farm, halfway house, group home, holding facility, or other placement [PREMISES, OR A PORTION OF PREMISES] used for housing [THE CONFINEMENT OF] persons under official detention;

If passed, the Department of Corrections does not anticipate a fiscal impact.

# FISCAL NOTE

**STATE OF ALASKA**  
**2012 LEGISLATIVE SESSION**

Bill Version CSHB 296(JUD)  
 Fiscal Note Number 2  
 (H) Publish Date 2/17/12

Identifier (file name) HB296-LAW-CRIM-01-27-12 Dept. Affected Law  
 Title An Act relating to service of process on prisoners; crime of escape; definition of 'correctional facility'. Appropriation Criminal  
 Allocation Criminal Justice Litigation  
 Sponsor Judiciary  
 Requester (H) Judiciary OMB Component Number 2202

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE		(Thousands of Dollars)						
		FY13	FY14	FY15	FY16	FY17	FY18	
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	

POSITIONS							
		FY13	FY14	FY15	FY16	FY17	FY18
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
		FY13	FY14	FY15	FY16	FY17	FY18

Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager  
 Division Administrative Services  
 Approved by Richard Svobodny, Acting Attorney General  
Department of Law

Phone 465-5427  
 Date/Time 1/27/12 4:10PM  
 Date 1/27/2012

FISCAL NOTE #2

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSHB 296(JUD)

**Analysis**

Current law allows service of process to be made to a person in a correctional facility on the shift supervisor where the person is housed. HB 296 provides a definition of correctional facility for purpose of this law – the definition of correctional facility in AS 33.30.901. The bill also expands that definition by including camps, farms, halfway houses, and other placements for the housing of persons under official detention.

Under current law it is escape in the fourth degree (AS 11.56.330) for a person to remove oneself from official detention for a misdemeanor. Escape in the fourth degree is a class A misdemeanor.

Under current law it is escape in the second degree (AS 11.56.310) to remove oneself from a correctional facility while under official detention. Escape in the second degree is a class B felony. The Court of Appeals has recently held that a person in a correctional facility in connection with a misdemeanor could not be found guilty of escape in the second degree if the person were held in a facility that did not have locked doors or guards.

HB 296 would provide that a person in a correctional facility that is secure in connection with a misdemeanor commits escape in the second degree – a class B felony. The bill defines secure correctional facility as a correctional facility that has physical restraints or staff that is charged with preventing escape.

There is no anticipated fiscal impact to Department of Law.

# FISCAL NOTE

STATE OF ALASKA cost # codes  
 2012 LEGISLATIVE SESSION

Bill Version CSHB 296(JUD)  
 Fiscal Note Number 3  
 Publish Date 2/17/12 (H)

Identifier (file name) HB296-DOA-PDA-1-27-12 Dept. Affected Administration  
 Title Crime of Escape/Def. of Correct Facility Appropriation Legal and Advocacy Services  
 Allocation Public Defender Agency  
 Sponsor Judiciary  
 Requester House Judiciary OMB Component Number 1631

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>****</b>	<b>****</b>	<b>****</b>	<b>****</b>	<b>****</b>	<b>****</b>	<b>****</b>

**FUND SOURCE** (Thousands of Dollars)

1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
<b>TOTAL</b>		<b>****</b>	<b>****</b>	<b>****</b>	<b>****</b>	<b>****</b>	<b>****</b>

**POSITIONS**

Full-time							
Part-time							
Temporary							

**CHANGE IN REVENUES**

--	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version

Prepared by Quinlan Steiner  
 Division Public Defender Agency  
 Approved by John Cramer, Deputy Commissioner  
Department of Administration

Phone 907 334-4414  
 Date/Time 1/27/12 9:42 PM  
 Date 1/27/2012

FISCAL NOTE #3

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSHB 296(JUD)

**Analysis**

This bill amends AS 11.56.310(a) by adding language that changes the definition of escape by including persons who remove themselves, without authority to do so, from a "secure" correctional facility while under official detention for a misdemeanor. Additionally, AS 11.81.900(b)(9) is amended by broadening the definition of a correctional facility. This new definition adds the descriptors prison, jail, camp, farm, halfway house, group home, holding facility or other placement as a correctional facility, when used for housing persons under official detention.

The expanded definition of correction facility and the inclusion of unauthorized exit from official detention in misdemeanor cases will increase the range of conduct that can be charged as escape and may increase the number of escapees charged. Additionally, the expanded definition will impact the number of cases that can be charged under the promoting contraband statutes. The Public Defender Agency has no reliable method for determining how many cases will be charged under the expanded definition, or how many of those charged would qualify for representation by the Public Defender. The Agency submits an indeterminate fiscal note.

# FISCAL NOTE

**STATE OF ALASKA**  
**2012 LEGISLATIVE SESSION**

Bill Version CSHB296  
 Fiscal Note Number \_\_\_\_\_  
 () Publish Date \_\_\_\_\_

Identifier (file name) HB296CS(JUD)-DOA-PDA-4-11-12 Dept. Affected Administration  
 Title Escape/Service on Prisoners/Monitoring Appropriation Legal and Advocacy Services  
 Allocation Public Defender Agency  
 Sponsor House Judiciary Committee  
 Requester Senate Judiciary OMB Component Number 1631

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS**

Full-time							
Part-time							
Temporary							

**CHANGE IN REVENUES**

--	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY12) operating costs** \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY13) costs** \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Language amending the statutory definition of "correctional facility" that would have created additional criminal cases was removed from the bill.

Prepared by Quinlan Steiner  
 Division Public Defender Agency  
 Approved by John Cramer, Deputy Commissioner  
Department of Administration

Phone 334-4414  
 Date/Time 4/11/12 10:42 AM  
 Date 4/11/2012

**FISCAL NOTE**

**STATE OF ALASKA  
2012 LEGISLATIVE SESSION**

**BILL NO.** CSHB296

**Analysis**

This bill amends AS 11.56.310(a) by adding language that changes the definition of escape by including persons who remove themselves, without authority to do so, from a "secure" correctional facility while under official detention for a misdemeanor.

This change brings the escape statute into compliance with current case law from the Alaska Court of Appeals. The Agency does not anticipate a fiscal impact and submits a zero note.



# Alaska State Legislature

## House of Representatives



*Handwritten signature of Max F. Gruenberg, Jr.*

*Interim:*  
716 W 4<sup>th</sup> Avenue, Rm 350  
Anchorage, Alaska 99501-2133  
*Phone:* (907) 269-0123  
*Fax:* (907) 269-0124

*Session:*  
Alaska State Capitol, Rm 110  
Juneau, Alaska 99801-1182  
*Phone:* (907) 465-4940  
*Toll Free:* (866) 465-4940  
*Fax:* (907) 465-3766

*Email:*  
Rep.Max.Gruenberg@legis.state.ak.us

*Member*  
*Standing Committees:*  
Judiciary  
Rules  
State Affairs  
Transportation

**Representative Max F. Gruenberg, Jr.**  
**House District 20**  
**Anchorage (Mountain View, Russian Jack, East Anchorage)**  
**House Minority Floor Leader**

To: Doug Wooliver; Alaska Court System, Shalon Harrington; Dept. of Corrections, Anne Carpeneti ; Dept. of Law-Criminal, Kelly Howell; Dept. of Public Safety

From: Representative Max Gruenberg

Date: February 24, 2012

RE: Repeal effective dates; Requiring Electronic Monitoring as special condition of Probation and parole for offenders whose offense was related to criminal street gangs

.....

It has come to the attention of the House Judiciary Committee that the following Alaska Statutes (Ch. 27, SLA 2007) are repealed effective on December 31, 2012;

### 1. AS 12.55.100(f)

\* **Section 1.** AS 12.55.100 is amended by adding a new subsection to read:  
(f) While on probation and as a special condition of probation for an offense where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or admitted, the court shall require that the defendant submit to electronic monitoring. Electronic monitoring under this section must provide for monitoring of the defendant's location and movements by Global Positioning System technology. The court shall require a defendant serving a period of probation with electronic monitoring as provided under this section to pay all or a portion of the costs of the electronic monitoring, but only if the defendant has sufficient financial resources to pay the costs or a portion of the costs. A defendant subject to electronic monitoring under this subsection is not entitled to a credit for time served in a correctional facility while the defendant is on probation. In this subsection, "correctional facility" has the meaning given in AS 33.30.901.

### 2. AS 33.16.150(g)

\* **Sec. 2.** AS 33.16.150 is amended by adding a new subsection to read:  
(g) In addition to other conditions of parole imposed under this section for a prisoner serving a sentence for an offense where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or admitted, the board shall impose as a condition of special medical, discretionary, and mandatory parole a requirement that the prisoner submit to electronic monitoring. Electronic monitoring under this

subsection must provide for monitoring of the prisoner's location and movements by Global Positioning System technology. The board shall require a prisoner serving a period of probation with electronic monitoring as provided under this section to pay all or a portion of the costs of the electronic monitoring, but only if the prisoner has sufficient financial resources to pay the costs or a portion of the costs. A prisoner subject to electronic monitoring under this subsection is not entitled to a credit for time served in a correctional facility while the defendant is on parole. In this subsection, "correctional facility" has the meaning given in AS 33.30.901.

The simplest way to keep this law in action is to enact language repealing the effective repealing date of December 31, 2012. Such a repeal has been adopted in to CS HB 296 (JUD) which is currently in the House Finance Committee awaiting scheduling. Members of the House Judiciary Committee are interested in your comments, suggestions and concerns regarding the repeal effective date for AS 12.55.100(f) and 33.16.150(g). Please feel free to contact my legislative aide, Miles Brookes at (907) 465-4940 with any information regarding this matter.

**HOUSE BILL NO. 296**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 1/25/12

Referred:

JUD, FIN

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to service of process on prisoners; relating to the crime of escape;  
2 relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of  
3 **Civil Procedure; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** AS 09.05.050 is amended by adding a new subsection to read:

6 (c) In this section, "correctional facility" has the meaning given in  
7 AS 33.30.901.

8 \* **Sec. 2.** AS 11.56.310(a) is amended to read:

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

11 (1) removes oneself from

12 (A) a secure correctional facility while under official detention  
13 for a misdemeanor;

14 (B) official detention for a felony or for extradition; or

1 (C) official detention and, during the escape or at any time  
2 before being restored to official detention, one possesses on or about oneself a  
3 firearm;

4 (2) violates AS 11.56.335 or 11.56.340 and, during the time of the  
5 unlawful evasion or at any time before being restored to official detention, one  
6 possesses on or about oneself a firearm; or

7 (3) removes, tampers with, or disables the electronic monitoring  
8 equipment, or leaves one's residence or other place designated by the commissioner of  
9 corrections for the service by electronic monitoring of official detention for a felony.

10 \* Sec. 3. AS 11.56.310 is amended by adding a new subsection to read:

11 (c) In this section, "secure correctional facility" means a correctional facility  
12 that

13 (1) uses construction fixtures or other restraints designed to restrict  
14 physically the physical movements and activities of persons under official detention;  
15 or

16 (2) employs correctional officers or other facility staff charged with  
17 preventing persons under official detention from departing the facility without lawful  
18 authorization. *delete*

19 \* Sec. 4/ AS 11.81.900(b)(9) is amended to read:

20 (9) "correctional facility" means a prison, jail, camp, farm, halfway  
21 house, group home, holding facility, or other placement [PREMISES, OR A  
22 PORTION OF PREMISES,] used for housing [THE CONFINEMENT OF] persons  
23 under official detention; *delete*

24 \* Sec. 5. The uncoded law of the State of Alaska is amended by adding a new section to  
25 read:

26 INDIRECT COURT RULE CHANGE. AS 09.05.050, including the amendment made  
27 by sec. 1 of this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure,  
28 relating to service of process on prisoners committed to the custody of the commissioner of  
29 corrections.

30 \* Sec. 6. The uncoded law of the State of Alaska is amended by adding a new section to  
31 read:

1           APPLICABILITY. The changes made to the crime of escape in the second degree  
2 under AS 11.56.310(a), as amended by sec. 2 of this Act, the definition of "secure correctional  
3 facility" in AS 11.56.310(c), added by sec. 3 of this Act, and the definition of "correctional  
4 facility" in AS 11.81.900(b)(9), as amended by sec. 4 of this Act, apply to offenses occurring  
5 on or after the effective date of this Act.

6       \* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

27-LS1199\D.5  
Gardner  
2/14/12

AMENDMENT #3

OFFERED IN THE HOUSE  
TO: HB 296

BY REPRESENTATIVE GRUENBERG

1 Page 1, line 2:

2 Delete "**relating to the definition of 'correctional facility'**"

3

4 Page 2, lines 13 - 18:

5 Delete all material and insert:

6 "(1) has construction fixtures or security features that are designed to  
7 restrict the ability of a person under official detention from leaving the facility without  
8 lawful authority; or

9 (2) has correctional officers or other persons authorized by the  
10 commissioner of corrections to prevent a person under official detention from leaving  
11 without lawful authority."

12

13 Page 2, lines 19 - 23:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 3, line 2, following "Act,":

19 Insert "and"

20

21 Page 3, lines 3 - 4:

22 Delete "and the definition of "correctional facility" in AS 11.81.900(b)(9), as amended  
23 by sec. 4 of this Act,"

1 by sec. 4 of this Act,"

AMENDMENT #2

OFFERED IN THE HOUSE  
TO: HB 296

BY REPRESENTATIVE GRUENBERG

1 Page 1, line 2:

2 Delete "**correctional facility**"

3 Insert "**secure correctional facility**"

4

5 Page 2, lines 13 - 18:

6 Delete all material and insert:

7 "(1) has construction fixtures or security features that are designed to  
8 restrict the ability of a person under official detention from leaving the facility without  
9 lawful authority; or

10 (2) has correctional officers or other persons authorized to prevent a  
11 person under official detention from leaving without lawful authority."

12

13 Page 2, lines 19 - 23:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 3, line 2, following "Act,":

19 Insert "and"

20

21 Page 3, lines 3 - 4:

22 Delete "and the definition of "correctional facility" in AS 11.81.900(b)(9), as amended  
23 by sec. 4 of this Act,"

AMENDMENT # 1

OFFERED IN THE HOUSE  
TO: HB 296

BY REPRESENTATIVE GRUENBERG

- 1 Page 1, line 2, following "**correctional facility**;"
- 2       Insert "**deleting the repeal of a provision relating to electronic monitoring as a**
- 3 **special condition of probation and parole for offenders whose offense was related to a**
- 4 **criminal street gang**;"
- 5
- 6 Page 2, following line 23:
- 7       Insert a new bill section to read:
- 8       "**\* Sec. 5. Section 3, ch. 27, SLA 2007, is repealed.**"
- 9
- 10 Renumber the following bill sections accordingly.

**ALASKA STATE LEGISLATURE**  
**HOUSE OF REPRESENTATIVES**  
**JUDICIARY COMMITTEE**  
**REPRESENTATIVE CARL GATTO, CHAIR**

(heard and held 2/1/12)

**COMMITTEE MEMBERS:**  
**REP. STEVE THOMPSON, VICE CHAIR**  
**REP. BOB LYNN**  
**REP. WES KELLER**  
**REP. LANCE PRUITT**  
**REP. LINDSEY HOLMES**  
**REP. MAX GRUENBERG**



**STATE CAPITOL BUILDING, RM 120**  
**JUNEAU, AK 99801-1182**  
**PHONE: 907-465-4990**  
**FAX: 907-465-2381**  
**HOUSE\_JUDICIARY@LEGIS.STATE.AK.US**

**HOUSE BILL 296**

**"An Act relating to service of process on prisoners; relating to the crime of escape; relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."**

HB 296 addresses ambiguities that have risen from recent court cases involving prisoner issues. It clarifies the permissible method of personally serving process on incarcerated prisoners. It also clarifies the second and fourth degree escape statutes. The bill does two things;

1. For the purpose of service of process on state prisoners HB 296 references the definition of "correctional facility" in AS 33.30.901 to clarify the manner in which incarcerated prisoners can be served civilly while incarcerated. The bill also makes it clear that the statute relating to the procedure for personally serving incarcerated persons, AS 09.05.030, is an indirect amendment to Alaska Civil Rule 4. These changes will ensure there is a standardized legal process for serving process on prisoners. It will cure the problem in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010), where the Alaska Supreme Court held that prison officials were not peace officers who could serve legal summons and complaints on incarcerated prisoners.

2. This bill also defines what constitutes the crime of escape in the second degree. The result in *Bridge v. State* 258 P.3d 923 (Alaska 2011) was suggested for Legislative review from the Legal Services Annual Report (Dec. 2011). Bridge, was charged with driving with a suspended license, a class A misdemeanor. He could not post bail and was therefore held in jail. He was then transferred to a halfway house. He left the facility without permission and was caught. As a result of the escape he was charged with escape in the second degree, a class B felony. The Alaska Court of Appeals found that although Bridge was in the custody of the Department of Corrections, he was not "confined," because the halfway house did not have staff whose duty it was to prevent prisoners from leaving. This bill defines escape in the second degree as being from a "secure correctional facility" while under detention for a misdemeanor. Further, a "secure correctional facility" is defined as using physical restraints or fixtures to prevent movements or activities of persons under detention or officers or staff that are charged with preventing persons under detention from departing such facilities without unlawful authorization. Other escapes by misdemeanants are fourth degree escapes,

a class A misdemeanor. This bill will codify the holding in *Bridge* and will avoid future questions as to what constitutes escape in the second degree.

This bill provides clearer guidelines for civil service of process of persons under the custody of the Department of Corrections removing question raised in *Hertz v. Carothers* 225 P.3d 571 (Alaska 2010). The bill refines escape in the second degree answering questions from *Bridge v. State* 258 P.3d 923 (Alaska 2011). This bill is necessary to avoid future litigation that may arise involving these issues.

Please contact legislative aide, Miles Brookes, at 465-4940 with any questions.

## Melanie Lesh

---

**From:** Nancy Meade <NMeade@courts.state.ak.us>  
**Sent:** Tuesday, January 31, 2012 12:33 PM  
**To:** Melanie Lesh  
**Subject:** HB 296

Hi Melanie –

HB 296 is scheduled to be heard in the House Judiciary Committee meeting tomorrow. I wanted to let you know that the court has no position on the bill, but normally I would attend the hearing because it does say that it indirectly amends a court rule. Unfortunately, I have a conflict tomorrow, and need to be in another hearing at the same time. Please feel free to call me or let me know if I can answer any questions about it.

*Nancy Meade  
General Counsel  
Alaska Court System  
Anch: 907-264-8264  
Juneau: 907-463-4736*

258 P.3d 923  
Court of Appeals of Alaska.  
Wendell D. BRIDGE, Appellant,  
v.  
STATE of Alaska, Appellee.  
No. A-10176. | Aug. 5, 2011.

### Synopsis

**Background:** Defendant, who left halfway house without permission while awaiting trial on misdemeanor charge, was convicted in the Superior Court, Fourth Judicial District, Fairbanks, Michael A. MacDonald, Randy M. Olsen, JJ., of second-degree felony escape. He appealed.

**Holdings:** The Court of Appeals, Mannheimer, J., held that:

- 1 jury instruction defining term “correctional facility” was improper, and
- 2 retrial of defendant would not violate double jeopardy.

Reversed.

Bolger, J., filed dissenting opinion.

### West Headnotes (2)

#### 1 Escape

☞ Nature and elements of offenses in general

For purposes of interpreting the second-degree escape statute, the term “correctional facility,” which is statutorily defined as “premises used for the confinement of persons under official detention,” applies only to situations where staff at the facility have a duty to physically prevent inmates from leaving without permission, and not to situations where the facility simply houses defendants who were placed there by the Department of Corrections pending their trial or sentencing. AS 11.56.310, 11.81.900(b)(9).

#### 2 Double Jeopardy

☞ Particular grounds for relief

Retrial of defendant on charge of second-degree escape would not violate double jeopardy based on trial court’s failure to properly instruct jury on term “correctional facility,” as required to properly convict defendant of second-degree escape; if on retrial, the State were to believe that it would be unable to establish that halfway house defendant left without permission qualified as a “correctional facility,” then the State could ask the trial court to enter judgment against defendant on lesser offense of fourth-degree escape under statute which prohibited any act of “remov[ing] oneself from official detention for a misdemeanor.” U.S.C.A. Const.Amend. 5; AS 11.56.310, 11.56.330(a)(1).

### Attorneys and Law Firms

\*924 Michael Schwaiger, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant.

Anne D. Carpeneti, Assistant Attorney General, Criminal Division Central Office, Juneau (brief), Timothy W. Terrell, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage (oral argument), and Daniel S. Sullivan, Attorney General, Juneau, for the Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and BOLGER, Judges.

### Opinion

#### OPINION

MANNHEIMER, Judge.

This appeal requires us to clarify the meaning of the term “correctional facility” for purposes of the second-degree escape statute, AS 11.56.310. Under subsection (a)(1)(A) of this statute, a person commits the felony of second-degree escape if they unlawfully remove themselves “from a correctional facility” while they are under official detention for any crime, even a misdemeanor.

The term “correctional facility” is defined in AS 11.81.900(b)(9) as “premises ... used for the confinement of persons under official detention”. The question posed in this appeal is whether the word “confinement” is equivalent to “residence” or “placement”—so that the term “correctional facility” would encompass *any* facility or residence where a prisoner has been ordered to remain by the Department of Corrections. Bridge argues that “confinement” has a narrower meaning—that it applies only when a prisoner’s mandated residence at a particular facility is physically enforced by guards and restraints.

For the reasons explained in this opinion, we agree with Bridge that, at least for purposes of interpreting the second-degree escape statute, the phrase “premises used for the confinement of persons under official detention” must be given a narrower meaning than “residence” or “placement”—that it applies only to situations where a prisoner’s residence is physically enforced.

#### *Underlying facts*

The defendant in this case, Wendell D. Bridge, was charged with a misdemeanor (driving with a suspended license). Because Bridge was unable to make bail, he was remanded to the custody of the Department of Corrections pending his trial.

\*925 Bridge was initially confined at the Fairbanks Correctional Center. However, when the Department of Corrections conducted their prisoner classification of Bridge, they concluded that he was eligible for placement at the Northstar Center, a halfway house operated by a private corporation in Fairbanks. The Northstar Center has a contract with the Department of Corrections for housing low-security misdemeanor defendants who are awaiting trial or sentencing. Pursuant to this contract, and pursuant to the Department of Corrections’ classification decision, Bridge was placed at the Northstar Center. Because Bridge was charged with a crime, was unable to make bail, and was in the legal custody of the Department of Corrections, he was under “official detention”—and he remained under official detention even after he was transferred to the Northstar Center.<sup>1</sup>

On New Year’s Day 2005, Bridge left the Northstar Center without permission. The Northstar staff notified the police, and the district court later issued a warrant for Bridge’s arrest. He was arrested some fifteen months later and charged with second-degree escape.

In the superior court, Bridge argued that the Northstar Center was not a “correctional facility”, and thus his act of walking away from the Center did not constitute second-degree escape. To help resolve this controversy, the superior court held a hearing at which the parties

presented evidence concerning Bridge’s status at the Northstar Center and the types of security measures employed at the Center. Based on the evidence presented at this hearing, the superior court concluded that the Northstar Center would qualify as a “correctional facility” for purposes of the escape statute (assuming the jury viewed the evidence in the light most favorable to the State).

Later, at Bridge’s trial, in keeping with this pre-trial ruling, the superior court instructed the jury that “a halfway house under contract with the Department of Corrections ... is a correctional facility for ... individuals placed there by [the Department] for purposes of confinement [awaiting trial or sentencing].” Because it was undisputed that Bridge walked away from the Northstar Center without permission and without justification, the jury convicted Bridge of second-degree escape.

In this appeal, Bridge renews his argument that the Northstar Center did not qualify as a “correctional facility” for purposes of the escape statute. If Bridge is correct, then his act of leaving the Northstar Center without permission did not constitute second-degree escape; instead, his action constituted the lesser offense of fourth-degree escape under AS 11.56.330(a)(1). (This statute prohibits *any* act of “remov[ing] oneself from official detention for a misdemeanor”.)

#### *This Court’s decision in State v. Crosby*

This Court’s decision in *State v. Crosby*, 770 P.2d 1154 (Alaska App.1989), is the primary appellate court decision construing the term “correctional facility” for purposes of Alaska’s second-degree escape statute. Both Bridge and the State discuss *Crosby* at length in their briefs. Accordingly, to meaningfully address the arguments in the parties’ briefs, we must examine the *Crosby* decision in some detail.

The defendant in *Crosby* was a sentenced prisoner who was released from prison on furlough to a residential drug treatment program, Akeela House.<sup>2</sup> Shortly after Crosby arrived at this residential facility, he walked away.<sup>3</sup> The State charged Crosby with second-degree escape, alleging (in the words of the statute) that he removed himself “from a correctional facility while under official detention.”<sup>4</sup> The superior court ruled that Akeela House was *not* a “correctional facility” \*926 for purposes of the escape statute, and the State then appealed.<sup>5</sup>

The term “correctional facility” is defined in AS 11.81.900(b); it means “[any] premises ... used for the confinement of persons under official detention”.<sup>6</sup> In *Crosby*, the State took the position that, under this

definition, the term “correctional facility” applied to *any* facility utilized by the Department of Corrections to house prisoners.<sup>7</sup> But this Court rejected the State’s reading of the statutory definition.

This Court’s explanation of why we rejected the State’s interpretation of the statute is lengthy and somewhat difficult to follow, but the salient point of our analysis was that the statutory definition of “correctional facility” does not encompass any and all premises used for the *placement or custody* of persons under official detention. Rather, the statute defines “correctional facility” as premises used for the *confinement* of persons under official detention. *Crosby*, 770 P.2d at 1155.

Because our criminal code contained no definition of “confinement”, we engaged in a lengthy analysis of the potential meanings of this word in the context of an escape statute. We concluded that the concept of “confinement” seemed to focus “not so much [on] the extent to which [a person’s] freedom is restrained[, but rather on] *the specific manner* in which the restraints are imposed and enforced”. *Id.* at 1157 (emphasis added).

We then offered two different explanations of why Crosby’s placement at the Akeela House residential treatment center did not constitute “confinement”—and, thus, why Akeela House was not a “correctional facility” for purposes of the second-degree escape statute. Our decision to offer two different explanations appears to stem from the fact that the trial court record did not offer a clear answer as to whether Akeela House employed security guards or utilized physical restraints or barriers to keep residents from leaving the premises without permission.

This Court’s first explanation of why Crosby was not in “confinement” at Akeela House was that, even though the conditions of Crosby’s furlough from prison required him to remain at Akeela House, this restraint on his liberty was not “imposed or enforced in ways that amount to actual confinement”. *Ibid.* We noted that “there [was] no indication” Akeela House had armed guards, physical restraints or barriers, or other security measures to physically prevent Crosby from leaving. *Ibid.*

This Court’s second explanation of why Crosby was not in “confinement” at Akeela House appears to be based on the alternate possibility that Akeela House did, in fact, use guards or physical restraints to prevent residents from leaving without permission. We declared that “[any such] restrictions that Akeela House [placed] on its residents” were imposed for the purpose of furthering its treatment plan, and not because Akeela House was the agent of the Department of Corrections for the purpose of “maintaining security over its prisoners”. *Ibid.* “Thus,” we concluded, “to the extent that Akeela House relies on restrictive measures amounting to actual confinement, [this] confinement is clearly not confinement by the

state.” *Ibid.*

This second rationale appears to be squarely predicated on the fact that Crosby was a *furloughed* prisoner—*i.e.*, someone who had been granted “an authorized leave of absence from actual confinement for a designated purpose and period of time”. AS 33.30.901(9) (the definition of “furlough”). In other words, the Department of Corrections had affirmatively decided to relinquish physical custody of Crosby for the purpose of allowing him to participate in the residential drug treatment program at Akeela House. Under the terms of Crosby’s furlough, he was obligated to participate in this residential treatment program—but the Department apparently trusted Crosby to do just that, and the Department took no steps (either directly, or through agreement with Akeela \*927 House) to physically confine Crosby to the treatment facility. Rather, in the words of AS 33.30.091(9), Crosby was on a “leave of absence from actual confinement”.

In sum, our decision in *Crosby* appears to have been ultimately based on the fact that the defendant was on furlough at the time he engaged in his unauthorized departure from Akeela House. But in our discussion of this issue, we suggested that even when a person is under official detention and living at a residential facility, the person is not “confined” there, for purposes of the escape statute, unless (1) the person is required to reside at the facility, (2) the person’s required residency is enforced by guards or by physical restraints on the person’s ability to leave, and (3) the guards or physical restraints are used at the behest of, or under the agency of, the Department of Corrections for the purpose of maintaining security over its prisoners, rather than for the private purposes of the corporation or group that runs the facility.

We note that the Alaska Legislature has not enacted a statutory definition of “confinement”, nor has the legislature altered the statutory definition of “correctional facility”, since we decided *Crosby* in 1989.

### ***Bridge’s argument on appeal***

In his brief to this Court, Bridge focuses on the portion of *Crosby* where we suggested that “confinement” hinges “not so much [on] the extent to which [a person’s] freedom is restrained[, but rather on] the specific manner in which the restraints are imposed and enforced”.<sup>8</sup>

Bridge devotes the majority of his brief to a discussion of the lack of security measures at the Northstar Center. According to the testimony presented at the evidentiary hearing in this case, the Northstar Center is a “non-secure” facility, in that it does not have guards, or a security fence, or even surveillance cameras. Inmates

wear their own clothes, they have their own money, and they are not locked inside the facility. The members of the Northstar staff do not carry weapons, and they are instructed not to try to physically restrain inmates who leave the premises.

Relying on the absence of guards and physical restraints at the Northstar Center, Bridge argues that the Northstar Center is not a “correctional facility” because he was not subjected to “confinement” in the sense of physical restraints on his freedom. The problem with Bridge’s argument is that it hinges on a portion of *Crosby* that appears to be dictum.

As we explained above, the *Crosby* decision offered two different explanations of why Crosby’s residence at Akeela House did not constitute “confinement”. The first explanation—*i.e.*, the portion of *Crosby* that Bridge relies on—dealt with the fact that Akeela House *apparently* did not utilize guards or physical restraints to keep residents from leaving without permission. But the record was unclear on this point, so this Court offered a second, alternative explanation for why Crosby’s residence at Akeela House did not constitute “confinement”. And under this second explanation, it was *irrelevant* whether Akeela House used guards or physical restraints to maintain control of its residents. This Court stated that even if Akeela House *did* utilize guards or physical restraints to keep residents from leaving, this would not constitute “confinement” for purposes of the escape statute—because these guards and physical restraints were not employed at the behest of the Department of Corrections, but rather were employed for the private purposes of Akeela House.<sup>9</sup>

Under this second rationale, the question of whether (or to what degree) the defendant in *Crosby* was subjected to physical restraints on his liberty during his residence at Akeela House was moot. The answer to this question made no difference to this Court’s decision. Thus, our discussion of what type of restraint might constitute “confinement” for purposes of the escape statute became dictum.

**\*928 The question of “confinement” revisited**

Bridge was not on furlough at the Northstar Center. That is, unlike the defendant in *Crosby*, no one had authorized Bridge to embark on a “leave of absence from actual confinement”. Rather, Bridge was a misdemeanor defendant who was awaiting trial, and who had been remanded to the custody of the Department of Corrections because he was unable to make bail. Because of this, Bridge’s case requires us to re-examine the question of what constitutes “confinement” for purposes of the escape statute.

The State’s main argument in this appeal is that Bridge should be deemed to have escaped from “confinement” because the Department of Corrections placed Bridge at the Northstar Center in lieu of housing him at the Fairbanks Correctional Center. The State points out that Bridge knew that he was legally obligated to remain at the Northstar Center: Bridge was a prisoner who was being held in custody awaiting his trial, and he remained a prisoner even though he had been granted the benefit of waiting for his trial at a non-prison facility.

The State’s description of Bridge’s status is correct, but the State’s argument is essentially the same one we rejected in *Crosby*. In *Crosby*, the State argued that the term “correctional facility” applied to *any* facility utilized by the Department of Corrections to house prisoners.<sup>10</sup> But as this Court noted in *Crosby*, the statutory definition of “correctional facility” does not encompass any and all premises used for the *placement* or *custody* of persons under official detention. Rather, the statute defines “correctional facility” as premises used for the *confinement* of persons under official detention. *Crosby*, 770 P.2d at 1155. Thus, we must decide whether the legislature intended the word “confinement” to mean something more specific or limited than “placement” or “custody”.

One basic difficulty in answering this question is the fact that the word “confinement”, like the word “convicted”, can mean different things, depending on the context.<sup>11</sup>

For example, AS 33.30.065 authorizes the Department of Corrections to allow a prisoner to serve their term of imprisonment, or to serve their period of temporary commitment while awaiting trial, by living at home under electronic monitoring. One might speak of these prisoners as being “confined” to their residence, even though no one is guarding them, and even though they are permitted to leave their home for various authorized purposes.

But as we noted in *Crosby*, the commentary to the draft provisions of our current escape statutes suggests that the word “confinement” was being used in a more restrictive sense—the sense of actual physical restraints placed on a person’s movement, enforced by officers whose duty is to keep the person from leaving without permission:

[T]he tentative draft commentary to AS 11.56.310 ... suggests that escapes from “correctional facilities” were designated as [a higher degree of crime] because of the heightened danger posed by inmates who seek to remove themselves from secure facilities:

The Code classifies all escapes from correctional facilities ... as escape in the second degree, a class B felony. Existing law differentiates between an escapee who has committed a felony and one who has committed a misdemeanor; an escape by a

misdemeanant is classified as a misdemeanor. The [Criminal Code Revision] Subcommittee concluded that the danger to society resulting from correctional facility escapes is substantial, regardless of whether the escapee is a felon or misdemeanant. The classification of all correctional facility escapes as serious felonies is consistent with the Code provision on the justifiable use of force in preventing an escape from a correctional facility[.]

\*929 *Crosby*, 770 P.2d at 1155, quoting Alaska Criminal Code Revision, Tentative Draft, Vol. 4 (1977), pp. 47–48.

This passage from the commentary to the Tentative Draft suggests that the drafters intended to draw a distinction between (1) all prisoners who unlawfully depart from the premises where they have been placed by the Department of Corrections, and (2) those prisoners who unlawfully depart from a facility where there are restraints or limitations on the prisoners' movement, and where corrections officers or other facility staff, acting as agents of the Department, are charged with the duty of preventing the prisoners from departing without permission. It is in these latter circumstances that an escape or attempted escape from the facility poses a heightened danger.

This was the context in which the *Crosby* court remarked that the word "confinement", as used in the statutory definition of "correctional facility", and as interpreted in the context of the second-degree escape statute, "seems to deal not so much with the extent to which [a person's] freedom is restrained as with the specific manner in which the restraints are imposed and enforced." *Crosby*, 770 P.2d at 1157.

In other words, there would be no "confinement" if a prisoner is subject only to *legal* restraints on their physical liberty, in the form of a Department of Corrections order directing them to reside at a particular facility. Rather, "confinement" would exist only when the prisoner's residence at the facility is forcibly maintained.

We note that the legislature appears to have used the word "confined" in this same narrow sense in AS 33.30.181(a), a statute that deals with prisoners whom the Department of Corrections has placed in a community restitution center. This statute declares that a prisoner who has been placed in one of these centers "shall be confined to the center at all times" *except* when the person is at work, or is traveling to and from work (or to attend a job interview), or is absent for another purpose specially approved by the commissioner. In this statute, the phrase "confined to the [community restitution] center" clearly means something more narrow than "placed in a community restitution center" or "classified to a community restitution center".

As we noted earlier in this opinion, this is not the only sense in which people use the words "confine" or "confinement". These words can mean different things in different contexts.

For example, when our supreme court declared in *Rust v. State* that the Commissioner of Corrections has the sole discretion to designate "the prison facility to which the prisoner is to be confined",<sup>12</sup> it is clear that the supreme court was using the word "confined" in the broader sense of "placed".

Similarly, it may make good sense to give the word "confinement" a broader meaning for purposes of interpreting AS 33.30.193, the statute that guarantees prisoners meaningful access to the courts for the purpose of challenging "the conditions of the prisoner's confinement". And it would seem that a broader interpretation of "confinement" might be justified when interpreting AS 33.30.211(b), the statute which provides that copies of a prisoner's pre-sentence report "and any other information ... that may affect the person's rehabilitation" shall be transmitted to the superintendent of the correctional facility in which the prisoner is "confined". For the same reasons, a broader interpretation of "confinement" might be warranted when interpreting AS 33.36.010, the statute which declares that it is the policy of the State of Alaska "not to transfer a resident inmate [to a facility] outside of [this] state" under the Interstate Corrections Compact "if [the] inmate's continued confinement in Alaska will better facilitate [their] rehabilitation or treatment".

In Judge Bolger's dissenting opinion, he asserts that the definition of "confinement" that we adopt in the present case will have manifold unfortunate consequences—because that same definition will apply in all of the contexts we have just mentioned, as well as several other contexts that Judge Bolger lists in his dissent. We disagree.

\*930 1 The limited question before us is the proper interpretation of "confinement" for purposes of interpreting the scope of the second-degree escape statute. Our definition of "confinement" for this particular purpose does not necessarily govern the meaning of this term for other purposes—because it is possible for the same word or phrase to have different meanings in different contexts. For example, this Court has repeatedly recognized that the word "conviction" can mean different things, depending on the context of the statute or rule being construed. See *Larson v. State*, 688 P.2d 592, 597–98 (Alaska App.1984); *Kelly v. State*, 663 P.2d 967, 971–72 (Alaska App.1983).

In the present appeal, our task is to identify the conduct that constitutes an escape from confinement for purposes

of the second-degree escape statute. This statute declares that any escape from a “correctional facility” is a class B felony, even when the defendant’s underlying criminal conduct (or charged conduct) is only a misdemeanor.

As we explained in *Crosby*, and as we explained earlier in this opinion, the commentary to the Tentative Draft of our criminal code suggests that the legislature’s underlying justification for this decision was the perception that escapes from correctional facilities pose a significantly greater degree of danger than other escapes, even when the defendant’s underlying crime or criminal charge is not itself particularly serious.

But this rationale—the greater potential danger posed by an escape from “confinement”—does not appear to apply to situations like the one presented in Bridge’s case: situations where a prisoner simply walks away from a residence where they have been directed to stay. Rather, the legislature’s rationale appears to apply only when the restrictions on a prisoner’s physical liberty are enforced by officers whose duty is to keep the person from leaving without permission.

We agree with the State that a prisoner can be “confined” in a facility, for purposes of the second-degree escape statute, even though that facility does not have “gun tower[s] or a fence topped with barbed wire to keep [prisoners] in place”. The paramount distinction between “placement” at a facility and “confinement” at a facility is the presence of corrections officers or other people whose duty is to prevent unauthorized departures from the facility—because the increased danger posed by escapes or attempted escapes from such facilities stems from the conflict or risk of conflict between the prisoner and these officers.

Thus, for instance, a work farm that has no towers and no restraining wall or fence could still be a place of “confinement” if it was staffed by corrections officers whose duty was to prevent prisoners from leaving without permission. But on the other hand, the fact that a halfway house has a wall or fence running around the perimeter of its lawn would not, of itself, convert the halfway house to a place of “confinement” if, as in Bridge’s case, no officer or staff member had the duty to stop residents from leaving the halfway house without permission.

For these reasons, we agree with Bridge that the superior court was wrong to instruct Bridge’s jury that the Northstar Center was a “correctional facility” simply because it housed defendants who were placed there by the Department of Corrections pending their trial or sentencing. The Northstar Center’s status as a “correctional facility” hinged on an additional question of fact: whether prisoners’ residence at the Center was forcibly maintained by corrections officers or by other

guards or staff members acting as agents of the Department of Corrections (either formally or *de facto* ).

### *The procedural posture of Bridge’s case*

During the pre-trial proceedings in Bridge’s case, the superior court ruled that it was irrelevant what types of restraints or controls were placed on prisoners at the Northstar Center. Instead, the superior court ruled that *any* halfway house was a “correctional facility” if, under contract with the Department of Corrections, it housed defendants who were in custody awaiting trial or sentencing.

At Bridge’s trial, the jurors were instructed in accordance with the superior court’s ruling. That is, the jurors were told: “A \*931 halfway house under contract with [the] Department of Corrections ... is a correctional facility for pre-sentenced individuals placed there by [the Department] for purposes of confinement.” In addition, the trial judge barred the defense attorney from arguing that the Northstar Center did not qualify as a “correctional facility” because the Center did not impose physical restraints on the freedom of its residents.

As we have explained, this jury instruction and this ruling were wrong. If the staff of the Northstar Center had no duty to physically prevent inmates from leaving without permission, then the Northstar Center was not a “correctional facility”—not a facility where prisoners were “confined”.

For this reason, Bridge is entitled to a new trial on the charge of second-degree escape.

2 In a single sentence at the end of his opening brief, Bridge asserts that the double jeopardy clause bars the State from retrying him on this charge. This is incorrect. The flaw in Bridge’s trial is that the jurors were misinstructed, in the government’s favor, on an element of the offense. The constitution does not bar a retrial under these circumstances.<sup>13</sup>

If the State believes that it will be unable to establish that the Northstar Center qualifies as a “correctional facility” under the test we have announced here, then the State may ask the superior court to enter judgement against Bridge on the lesser offense of fourth-degree escape under AS 11.56.330(a)(1)—the statute which prohibits any act of “remov[ing] oneself from official detention for a misdemeanor”.

The judgement of the superior court is REVERSED.

BOLGER, Judge, dissenting.

We recently held that a prisoner at a halfway house was “confined” in a “correctional facility” for purposes of the good-time credit statute.<sup>1</sup> I believe that the escape statute should be construed the same way. The requirement of armed guards is not mentioned in the text or history of this statute or in the numerous other criminal procedure statutes where these terms are used.

The central issue in this case is whether Northstar Center is a “correctional facility”—that is, a “premises ... used for the confinement of persons under official detention.”<sup>2</sup> We considered the meaning of the term “confinement” when we addressed another section of the escape statute in *Beckman v. State*.<sup>3</sup> We concluded that Beckman was subject to “confinement” when he was allowed to attend residential treatment at Akeela House.<sup>4</sup> But Beckman was not confined “under an order of a court,” as required by the definition of “official detention,” because he was released to attend Akeela House as a condition of his probation.<sup>5</sup>

The legislature amended the definition of “official detention” in 1991.<sup>6</sup> The amendment was intended to overrule two of our cases that had construed this term narrowly.<sup>7</sup> I believe that the amendment corrected an ambiguity in the term “confinement” as it had been previously construed. The definition of “official detention” now includes “actual or constructive restraint” imposed by a court order.<sup>8</sup> When this definition is inserted into the definition of “correctional facility,” that term now includes a facility designated for “confinement” under the constructive restraint of a court order. In other words, the statute now includes facilities where the prisoners are constructively restrained \*932 as well as facilities with barbed wire and armed guards.

Footnotes

- 1 The term “official detention” is defined as “custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release”. AS 11.81.900(b)(40).
- 2 *Crosby*, 770 P.2d at 1154.
- 3 *Id.* at 1155.
- 4 *Ibid.*
- 5 *Ibid.*
- 6 At the time of the litigation in *Crosby*, this definition was found in AS 11.81.900(b)(7). Since then, the statute has been renumbered as section 900(b)(9), but the definition remains the same.
- 7 *Crosby*, 770 P.2d at 1155.
- 8 *Id.* at 1157.
- 9 *Ibid.*
- 10 *Crosby*, 770 P.2d at 1155.
- 11 See *State v. Otness*, 986 P.2d 890, 893 (Alaska App.1999): “This court has recognized that the term ‘convicted’ can have different

The terms “confinement” and “correctional facility” are used in many criminal statutes. The definition of “correctional facility” that we construe in this case will also determine the scope of correctional facility litigation,<sup>9</sup> liability for sexual assault,<sup>10</sup> liability for promoting contraband,<sup>11</sup> the responsibility for victim notification in domestic violence cases,<sup>12</sup> the liability for correctional facility surcharges,<sup>13</sup> and the deadline for sex offender registration.<sup>14</sup> None of these applications suggest that this term should be limited to facilities with armed guards.

These terms are also used to define the requirements for criminal punishment. Various statutes require that a person sentenced to imprisonment must report to serve a term of “confinement” at a “correctional facility,”<sup>15</sup> that he will accrue good-time credit if he follows the rules of the “correctional facility” where he is “confined,”<sup>16</sup> that he will be returned to “confinement” in a “correctional facility” if he violates parole,<sup>17</sup> and that he will begin probation upon his release from “confinement in a correctional facility.”<sup>18</sup>

My point is that these terms are used throughout the criminal statutes, and they should be construed consistently.<sup>19</sup> I would read the terms that apply to the escape statute in the same way that we have applied those terms to the good-time credit statute. In other words, I agree with the trial judge’s instruction in this case—a halfway house is a “correctional facility” for those pretrial detainees who are placed there by the Department of Corrections.

**Bridge v. State, 258 P.3d 923 (2011)**

---

meanings, depending on the context. For some purposes, defendants are deemed 'convicted' when a jury or a judge finds them guilty. For other purposes, defendants are not 'convicted' until the court formally enters judgement against them following the sentencing hearing." (Footnotes omitted)

- 12 582 P.2d 134, 137 (Alaska 1978).
- 13 *See West v. State*, 223 P.3d 634, 639–640 (Alaska App.2010); *Burks v. United States*, 437 U.S. 1, 15–16, 98 S.Ct. 2141, 2149, 57 L.Ed.2d 1 (1978); *State v. Kalaola*, 124 Hawai'i 43, 237 P.3d 1109, 1141 (2010); *State v. Rosaire*, 123 N.M. 250, 939 P.2d 597, 601–02 (App.1996).
- 1 *State v. Shetters*, 246 P.3d 332, 333 (Alaska App.), *aff'd on reh'g*, 246 P.3d 338 (Alaska App.2010).
- 2 AS 11.81.900(b)(9).
- 3 689 P.2d 500 (Alaska App.1984).
- 4 *Id.* at 502.
- 5 *Id.*
- 6 *See* Ch. 91, § 3, SLA 1991.
- 7 *See id.* at § 1.
- 8 AS 11.81.900(b)(40).
- 9 *See* AS 09.19.200(g)(3).
- 10 *See* AS 11.41.425(a)(2).
- 11 *See* AS 11.56.375, .380.
- 12 *See* AS 12.30.027(d).
- 13 *See* AS 12.55.041(a).
- 14 *See* AS 12.63.010(a)(1).
- 15 *See* AS 12.55.025(c).
- 16 *See* AS 33.20.010(a).
- 17 *See* AS 33.16.250(a).
- 18 *See* AS 12.55.125(o).
- 19 *See State v. Strane*, 61 P.3d 1284, 1286 n. 4 (Alaska 2003) (stating that statutes relating to the same subject matter should be construed together as a scheme that maintains the integrity of each statute).

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

225 P.3d 571  
Supreme Court of Alaska.

Sidney HERTZ, Appellant,  
v.  
Dan CAROTHERS, Appellee.

No. S-13245. | Feb. 12, 2010. | Rehearing Denied  
March 10, 2010.

**Synopsis**

**Background:** Prisoner’s civil rights action against State was dismissed and Superior Court awarded attorney’s fees to the State. State attempted to execute judgment against prisoner trust account. Prisoner objected. The Superior Court, First Judicial District, Juneau, Patricia A. Collins, J., held that prisoner was properly served, trust account was subject to execution, and that State’s attorney should not be sanctioned. Prisoner appealed.

**Holdings:** The Supreme Court, Christen, J., held that:  
1 State did not comply with notice requirements, but prisoner was not prejudiced;  
2 statutes governing prisoner trust accounts did not conflict with one another;  
3 statute allowing disbursement of prisoner trust accounts in order to satisfy judgments was not an ex post facto law;  
4 statute did not violate contract clause; and  
5 attorney’s failure to comply with notice requirements did not warrant sanctions.

Affirmed in part, reversed in part.

West Headnotes (13)

**1 Appeal and Error**  
☞Cases Triable in Appellate Court

Supreme Court reviews issues of statutory interpretation, as well as questions about the constitutionality of statutes, de novo.

**2 Appeal and Error**  
☞Costs and Allowances

Decisions whether to sanction attorneys are reviewed for abuse of discretion.

**3 Appeal and Error**  
☞Proceedings Preliminary to Trial

A judge’s refusal to recuse him- or herself is reviewed under the abuse of discretion standard.

**4 Execution**  
☞Notice of levy

State did not comply with notice requirements in rule governing permissible methods for serving a summons in State’s action seeking to execute judgment against prisoner trust account, but failure did not prejudice prisoner; prison guard who delivered documents to prisoner was not a peace officer or person specially appointed to serve process with the meaning of the rule, but prisoner had actual notice. Rules Civ.Proc., Rule 4.

**5 Execution**  
☞Property in custody of agent or depository  
**Prisons**  
☞Money and finances; inmate accounts  
**Prisons**  
☞Wages or earnings  
**Statutes**  
☞Nature and subject-matter of statute

Statute providing for prisoners to be compensated for their work in prison and wages to be placed in trust account did not conflict with statute allowing for disbursement of prisoner trust account to satisfy a judgment; statutes were not criminal statutes, as prisoner asserted, and therefore did not have to be strictly construed against the State. AS 09.38.030(f)(5), 33.30.201(d).

- 6 **Constitutional Law**  
⊖ Sentencing and Imprisonment  
**Execution**  
⊖ Property in custody of agent or depository
- Statute allowing disbursement of prisoner trust accounts in order to satisfy judgments was not an ex post facto law, where statute did not criminalize behavior that was previously not criminal and it had no bearing on the defense of any crime. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 09.38.030(f)(5).
- 7 **Constitutional Law**  
⊖ Punishment in general  
**Constitutional Law**  
⊖ Criminal Proceedings
- Any statute which punishes as a crime an act previously committed, which was innocent when done, which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with a crime of any defense available according to law at the time when the act was committed, is prohibited as ex post facto. U.S.C.A. Const. Art. 1, § 10, cl. 1.
- 8 **Constitutional Law**  
⊖ Contracts with states in general  
**Execution**  
⊖ Property in custody of agent or depository
- Statute allowing disbursement of prisoner trust accounts in order to satisfy judgments did not violate contract clause; statute did not impair prisoners' ability to seek enforcement of the *Cleary* consent decree which set minimum standards for conditions of prisoner confinement and procedures for prisoners to file grievances for non-compliance with decree. U.S.C.A. Const. Art. 1, § 10, cl. 1; Const. Art. 1, § 15; AS 09.38.030(f)(5).
- 9 **Judgment**  
⊖ Construction and operation of judgment
- The *Cleary* consent decree sets minimum standards for conditions of prisoner confinement including food, medical care, and dental care and provides procedures for prisoners to file grievances for non-compliance with the decree.
- 10 **Prisons**  
⊖ Access to Courts and Public Officials
- An inmate's right to be free of state interference with his right of access to the court system is not absolute.
- 11 **Constitutional Law**  
⊖ Prisoners and pretrial detainees
- A statute is constitutional if it does not impermissibly interfere with, or burden, an inmate's right of access to the court and is sufficiently related to a legitimate government interest.
- 12 **Attorney and Client**  
⊖ Liability for costs; sanctions
- State's counsel's failure to comply with notice requirements in State's action to execute judgment against prisoner trust account did not warrant sanctions against counsel under civil rule of procedure or rules of professional conduct; there was no evidence that State's counsel intended to deprive prisoner of his right to notice. Rules Civ.Proc., Rules 4, 95(b).
- 13 **Appeal and Error**  
⊖ Disqualification of judge
- Prisoner waived for appellate review his argument that trial judge should have recused

herself in State's action to execute a judgment against prisoner trust account, where prisoner failed to move for disqualification in the superior court.

### Attorneys and Law Firms

\*572 Sidney R. Hertz, pro se, Seward.  
Marilyn J. Kamm, Assistant Attorney General, Richard A. Svobodny, Acting Attorney General, Juneau, for Appellee.

Before: EASTAUGH, WINFREE and CHRISTEN, Justices.

### Opinion

#### OPINION

CHRISTEN, Justice.

### I. INTRODUCTION

This is the second time we have addressed Sidney Hertz's objections to the State's attempt to execute a judgment against his prisoner trust account. In *Hertz v. Carothers*<sup>1</sup> (*Hertz I*), Hertz challenged the State's right to execute on his prisoner trust account to satisfy a judgment for Alaska Civil Rule 82 attorney's fees entered after Hertz lost a prisoner civil rights lawsuit against the State. There, we affirmed the validity of AS 09.38.030(f) which excludes prisoners from an exemption for low wage earners. Following *Hertz I*, the State again levied on Hertz's trust account to satisfy the remainder of its judgment. Hertz now challenges the levy on the grounds that (1) he was not served properly; (2) "ambiguities" between AS 09.38.030(f) and AS 33.30.201(d) should be resolved in his favor; (3) AS 09.38.030(f)(5) is an *ex post facto* law; and (4) AS 09.38.030(f)(5) violates the contract clauses of the Alaska and United States Constitutions. We reverse the court's ruling that Hertz was properly served but affirm the court's rulings that Hertz's prisoner trust account is subject to execution and that the State's attorney should not be sanctioned. We also hold that AS 09.38.030(f) is not an *ex post facto* law and that it does not violate the contract clause of the Alaska Constitution or the contract clause of the United States Constitution.

### II. FACTS AND PROCEEDINGS

Hertz is an inmate at Spring Creek Correctional Center ("SCCC"). In July 2004 he sued the Alaska Department of Corrections \*573 and several of its employees for alleged civil rights violations.<sup>2</sup> The superior court dismissed Hertz's civil rights suit and awarded Rule 82 attorney's fees of \$3,225 to the State.<sup>3</sup> The fee award was later reduced to a judgment.<sup>4</sup> When the State attempted to execute against Hertz's prisoner trust account to satisfy the judgment, Hertz claimed exemptions under AS 09.38.030(a) and (b).<sup>5</sup> Specifically, he argued that his wages were exempt from execution because they fell below the statutory minimum in AS 09.38.030.<sup>6</sup> Alternatively, he argued that the statute was invalid under several different theories.<sup>7</sup> In our January 2008 decision, *Hertz I*, we affirmed the superior court's order rejecting Hertz's claims of exemption.<sup>8</sup> We also affirmed the validity of AS 09.38.030(f).<sup>9</sup>

On March 14, 2008, the State again sought to execute against Hertz's prisoner account to satisfy the remaining portion of its judgment. The State's service instructions directed the Alaska State Troopers (Judicial Services) to serve the writ of execution and creditor's affidavit on Superintendent Turnbull at SCCC. The service instruction form contained a separate section entitled "Instructions for Serving Notices on the Debtor," which directed that a copy of the State's creditor's affidavit, notice of levy and sale of property, notice of right to exemptions, claim of exemptions form, and judgment debtor booklet be served on Hertz. On June 12, 2008, a trooper served the writ of execution on Superintendent Turnbull. The trooper did not serve any documents on Hertz.

It is undisputed that Hertz had actual knowledge of the State's attempt to execute against his prisoner trust account by June 17, 2008, when he sent a letter to the superior court challenging the State's "theft" of his money based in part on lack of notice. When the State's counsel realized that Hertz had not been served, she faxed the documents that should have been served on Hertz to SCCC. A prison guard personally delivered them to Hertz on June 19, 2008.

Hertz responded to the faxed documents by filing several claims of exemption in which he argued that (1) improper service voids the levy; (2) "ambiguities" between AS 33.30.201(d)-which provides that the "primary purpose" of the prisoner trust account is to make funds available for prisoners' use at the time of release-and AS 09.38.030(f)(5)-which allows the execution of judgments against prisoner accounts-must be construed against the government; and (3) \$185 in his trust account was not subject to execution because he had received it in the

form of gifts from family and friends and the money should have been retained by the commissioner pursuant to AS 33.30.201(d).

On August 5, 2008, the superior court denied Hertz's claims of exemption, citing *Hertz I*. The superior court reasoned that our court "has ruled that a prisoner's trust account may be subject to execution," and noted that there is no exception in the statutory scheme for money acquired by gift. Finally, the court rejected Hertz's argument that the errors in the State's service should negate the writ because "there is no prejudice by [the] delayed service and no showing of a knowing violation of the statute." The superior court rejected Hertz's motion for reconsideration.

Hertz appeals.

### III. STANDARDS OF REVIEW

1 2 3 We review issues of statutory interpretation, as well as questions about the constitutionality of statutes, de novo.<sup>10</sup> "Decisions whether to sanction attorneys are reviewed \*574 for abuse of discretion."<sup>11</sup> "A judge's refusal to recuse him- or herself is reviewed under the abuse of discretion standard."<sup>12</sup>

### IV. DISCUSSION

#### A. The Execution on Hertz's Prisoner Trust Account Was Invalid Because the State Failed To Properly Serve Him.

4 The State argues that it was in technical compliance with AS 09.38.085(a)(1) because it served Hertz with a notice of levy, a claim of exemptions form, a creditor's affidavit, and a judgment debtor's handbook. But the State misses the crux of Hertz's argument. Hertz's challenge is not to the sufficiency of the documents served; he challenges the State's method of service.

Several statutes and rules describe the notice the State was required to provide Hertz before levying on his trust account. Alaska Statute 09.38.080(c) requires that "[b]efore, at the time of, or within three days after the levy, the creditor shall serve on the individual [debtor] a notice under AS 09.38.085." Alaska Statute 09.38.085 describes the content of the required notices, and AS 09.38.500, the definitions section of the Alaska Exemptions Act, specifies the method for serving the notices. The term "serve notice" in AS 09.38.080(c) means "to give the person to be served a written personal notice in the same manner a summons in a civil action is served, or to mail the notice to the person's last known

address by first-class mail and by using a form of mail requiring a signed receipt."<sup>13</sup> Hertz was served personally, not by mail, so we turn to the civil rules.

Civil Rule 4 identifies the permissible methods for serving a summons in a civil action. It requires service to "be made by a peace officer, by a person specially appointed by the Commissioner of Public Safety for that purpose or, where a rule so provides, by registered or certified mail." The rule defines "peace officer" as "any officer of the state police, members of the police of any incorporated city, village or borough, United States Marshals and their deputies, other officers whose duty it is to enforce and preserve the public peace, and ... persons specially appointed." Special appointments "shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant."<sup>14</sup>

After the State's counsel learned that the trooper had failed to serve Hertz as instructed, she faxed the documents to SCCC. A prison guard delivered them to Hertz on June 19, 2008. But the State did not argue, and the record does not show, that the prison guard who served Hertz was a "peace officer" or a person "specially appointed to serve process" within the meaning of Civil Rule 4. We agree with the superior court that the delay in service was not prejudicial to Hertz, but the State was still required to use an authorized method of service. The record does not show that the State complied with Civil Rule 4.<sup>15</sup>

We are mindful that our ruling regarding service may appear to elevate form over substance because Hertz had actual knowledge of the levy by June 16, 2008. But we are loathe to carve out exceptions to the important rules for service of process. These rules enable courts to verify that service has actually been made; they are vital to ensuring that litigants receive the due process to which they are entitled, and they are broadly applicable. Creating an exception merely to avoid requiring the State to properly serve Hertz is fraught with precedential danger. Such an exception, though seemingly narrow, could be applied in future cases to relax the notice requirements for litigants \*575 who might not have received the actual notice Hertz enjoyed. This danger would be especially acute in cases involving requests for entry of default judgment. Given the serious consequences of execution, i.e., the involuntary confiscation of a debtor's property, we must insist on strict compliance with the legislature's statutory scheme and the service requirements of Civil Rule 4.<sup>16</sup>

#### B. Alaska Statutes 33.30.201(d) and 09.38.030(f)(5) Do Not Conflict and Are Not Ambiguous.

5 Alaska Statute 33.30.201(d) provides for prisoners to be compensated for their work in prison and for their wages to be placed in a trust account for the "primary purpose"

of being available to them at the time of release. But AS 09.38.030(f) provides that “[a]ll money in an incarcerated person’s account at a correctional facility is available for disbursement under a notice of levy under this subsection ... (5) to satisfy other judgments entered against a prisoner in litigation against the state.” Hertz argues that the “primary purpose” language of AS 33.30.201(d) conflicts with the disbursement scheme in AS 09.38.030(f). Citing this “ambiguity” Hertz argues that “[a]mbiguities in criminal statutes must be narrowly read and construe[d] strictly against the government.”

In *Hertz I*, we upheld the state’s ability to execute on prisoner accounts despite an exemption for low-wage earners and those who are paid semi-monthly.<sup>17</sup> We noted that AS 09.38.030(f)(5) specifically eliminates the low-wages exemption when low wages are paid to prisoners.<sup>18</sup>

Hertz’s present challenge to AS 09.38.030(f)(5) is technically barred by the doctrine of *res judicata*;<sup>19</sup> he was required to raise all of his challenges to the statute in *Hertz I*.<sup>20</sup> But Hertz’s argument is unavailing even on the merits. Alaska Statute 33.30.201 states that prisoner wages shall be disbursed pursuant to a specified order of priority and that remaining funds are to be given to the prisoner when he or she is released, subject to exceptions. After all disbursements are paid in the statutorily required order of priority, subsection .201(f) states that remaining funds are subject to lien, attachment, garnishment, execution, or similar procedures to encumber money or property. This provision does not conflict with AS 09.38.030(f)(5). Alaska Statutes 33.30.201(c) and (f) identify the priorities for which a prisoner’s trust account can be invaded, and AS 09.38.030(f) explains that prisoners do not enjoy the benefit of the exemption for earnings and liquid assets enunciated in AS 09.38.030 generally. Both statutes contemplate and accommodate the execution and garnishment of prisoner trust accounts.

To the extent that Hertz argues that these statutes must be construed against the State because they are “criminal statutes,” he is mistaken. The fact that these statutes govern the administration of prisoner trust accounts does not make them “criminal statutes.” Hertz has cited no authority and we have found none supporting his assertion that statutes should be strictly construed against the State merely because they apply to convicted felons. Alaska Statutes 09.38.030 and 33.30.201 are civil statutes, they are not ambiguous, and they do not conflict. After all disbursements are made from a prisoner’s trust account pursuant to the statute’s order of priority, all remaining funds are subject to execution.

**\*576 C. Alaska Statute 09.38.030(f)(5) Is Not an Ex Post Facto Law.**

6 Hertz asserts that AS 09.38.030(f)(5) is an *ex post facto* law. The basis for this argument is that this statute was passed in 1995, after the State entered into a consent decree to resolve litigation challenging the conditions of confinement for Alaska prisoners.<sup>21</sup> Hertz argues that the adoption of AS 09.38.030(f)(5) in the wake of the *Cleary* consent decree creates the appearance that AS 09.38.030(f)(5) “was enacted solely for the purpose of circumventing the *Cleary* [Final Settlement Agreement and Order].”

7 We have adopted the United States Supreme Court’s view that:

any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission; or which deprives one charged with a crime of any defense available according to law at the time when the act was committed, is prohibited as *ex post facto*.<sup>22</sup>

Alaska Statute 09.38.030(f)(5) does not criminalize behavior that was previously not criminal and it has no bearing on the defense of any crime; it is not an *ex post facto* law.

**D. Alaska Statute 09.38.030(f)(5) Does Not Violate the Contract Clause.**

8 Hertz argues that AS 09.38.030(f)(5) violates the contract clause of the United States Constitution and the contract clause of the Alaska Constitution by “substantial[ly] impair[ing]” his contractual right to allege noncompliance with the *Cleary* consent decree. He supports this argument by pointing out that “this Court has admitted that AS 09.38.030(f)(5) was to discourage prisoner litigation.” Our court has explained:

Article I, section 15 of the Alaska Constitution provides: “No law impairing the obligation of contracts ... shall be passed.” Because the language of the contract clause of the Alaska Constitution is nearly identical to that of the federal Contract Clause, we apply the same two-part analysis to alleged violations of the Alaska and federal contract clauses. We first ask “whether the change in state law has operated as a substantial impairment of a contractual relationship.” If there is a substantial impairment, we then examine “whether the impairment is reasonable and necessary to serve an important public purpose.”

....

Under the first prong of the contract clause test, we

consider: (1) whether there is a contractual relationship, (2) whether the law impairs the contractual relationship, and (3) whether the impairment is substantial.<sup>[23]</sup>

9 The *Cleary* consent decree sets minimum standards for conditions of prisoner confinement including food, medical care, and dental care. It also provides procedures for prisoners to file grievances for non-compliance with the decree.<sup>24</sup> After exhausting the “administrative grievance procedure,” an inmate may file suit in superior court. In this case, the State does not challenge Hertz’s assertion that the *Cleary* consent decree established a contractual relationship between the State and inmates in the custody of the State of Alaska,<sup>25</sup> arguing instead that even if such a contractual relationship exists, AS 09.38.030(f) does not impair it. We agree; AS 09.38.030(f) does not impair prisoners’ ability to seek enforcement of the *Cleary* consent decree. We do not need to decide \*577 whether the *Cleary* consent decree constitutes a binding contract.

10 11 Civil Rule 82 provides for the award of attorney’s fees to the prevailing party of a civil lawsuit. Civil Rule 82 was in effect when the *Cleary* consent decree was entered, November 1, 1990. The consent decree addresses certain conditions of confinement; it does not immunize prisoners from attorney’s fee awards or exempt inmate trust accounts from execution to satisfy fee awards. Alaska Statute 09.38.030(f)(5) allocates some of the State’s cost of defending lawsuits to the non-prevailing prisoner, thereby discouraging frivolous claims.<sup>26</sup> “An inmate’s right to be free of state interference with his right of access to the court system is not absolute.”<sup>27</sup> A statute is constitutional if it “does not impermissibly interfere with, or burden, an inmate’s right of access to the court and is sufficiently related to a legitimate government interest.”<sup>28</sup> Alaska Statute 09.38.030(f)(5) does not prevent or stifle a prisoner’s ability to pursue legitimate claims against the government.

The specter of Rule 82 fees tempers the litigiousness of most civil litigants; we see no reason to make a special exception for inmates. Alaska Statute 09.38.030(f)(5) merely reflects the State’s interest in discouraging frivolous prisoner litigation, a legitimate goal we have repeatedly upheld.<sup>29</sup> We are not convinced that permitting the State to collect judgments from prisoner trust accounts impairs the right of prisoners to seek enforcement of the *Cleary* consent decree,<sup>30</sup> and we hold that AS 09.38.030(f)(5) does not violate the Alaska or federal prohibition against impairment of contracts.

#### E. There Was No Misconduct by the State’s Attorney.

12 Hertz asserts that the superior court erred by failing to sanction the State’s counsel under Professional Conduct Rule 95(b) for (1) failing to have him served by a peace officer; and (2) for lying because she “never intended to serve Hertz with the Writ.”

The superior court correctly decided that Hertz’s claims of attorney misconduct are meritless. There is no evidence that the State’s counsel acted inappropriately during the course of her efforts to collect the State’s judgment. At most, there is evidence that a mistake was made at the time of service. Ironically, Hertz’s allegation of misconduct arises from counsel’s rush to arrange for personal delivery of the documents that would notify Hertz of his right to claim exemptions; the State’s attorney likely faxed the documents to SCCC for immediate delivery in order to comply with AS 09.38.080(c), which requires the debtor to receive notice “[b]efore, at the time of, or within three days after the levy.”

Even though the State failed to comply with Civil Rule 4, there is no evidence that the State’s counsel intended to deprive Hertz of his right to notice. Hertz admits that he received the relevant documents by fax just days after he learned of the levy and apparently shortly after the State’s attorney discovered the mistake. The superior court appropriately declined to sanction the State’s attorney.

#### F. Hertz Waived His Argument that Judge Collins Should Have Recused Herself Because of Apparent Bias Against Prisoners.

13 Hertz argues that the superior court judge created an appearance of impropriety by ruling on his claim of exemptions before receiving his response to the State’s objections. \*578 31 We see no evidence of any bias in the record. And Hertz waived the issue in any event by failing to move for disqualification in the superior court.<sup>32</sup>

#### IV. CONCLUSION

We REVERSE the court’s ruling that Hertz was adequately served, but hold that AS 33.30.201(d) and AS 09.38.030(f)(5) do not conflict and are not ambiguous, that AS 09.38.030(f)(5) is not an *ex post facto* law, and that AS 09.38.030(f)(5) does not violate the contract clause of the Alaska Constitution or United States Constitution. We AFFIRM the superior court’s rulings that Hertz’s trust account is subject to execution and that the State’s attorney should not be sanctioned.

CARPENETI, Chief Justice and FABE, Justice, not

participating.

Footnotes

- 1 174 P.3d 243 (Alaska 2008).
- 2 *Id.* at 245.
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 *Id.*
- 7 *Hertz v. Carothers*, 174 P.3d 243, 245 (Alaska 2008).
- 8 *Id.*
- 9 *Id.* at 244.
- 10 *C.J. v. State, Dep't of Corr.*, 151 P.3d 373, 377 (Alaska 2006) (citing *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 603 (Alaska 1999); *Boone v. Gipson*, 920 P.2d 746, 748 (Alaska 1996)).
- 11 *Hertz*, 174 P.3d at 245 (citing *In re Schmidt*, 114 P.3d 816, 819 (Alaska 2005)).
- 12 *Mustafoski v. State*, 867 P.2d 824, 832 (Alaska App.1994) (citing *Blake v. Gilbert*, 702 P.2d 631, 640 (Alaska 1985); *Perotti v. State*, 806 P.2d 325, 327 (Alaska App.1991)).
- 13 AS 09.38.500(14).
- 14 Alaska R. Civ. P. 4(c)(3).
- 15 The State's reliance on the substantial compliance provision in AS 09.38.085(c) is misplaced. That provision excuses errors in the notices themselves, not errors in the physical delivery of the forms.
- 16 *See Beery v. Browning*, 717 P.2d 365, 367 n. 8 (Alaska 1986).
- 17 *Hertz v. Carothers*, 174 P.3d 243, 246 (Alaska 2008).
- 18 *Id.*
- 19 *See Plumber v. Univ. of Alaska Anchorage*, 936 P.2d 163, 166 (Alaska 1997) ("The doctrine of *res judicata* as adopted in Alaska provides that a final judgment in a prior action bars a subsequent action if the prior judgment was (1) a final judgment on the merits, (2) from a court of competent jurisdiction, [and] (3) in a dispute between the same parties ... about the same cause of action.").
- 20 *Calhoun v. Greening*, 636 P.2d 69, 72 (Alaska 1981) ("[A] fundamental tenet of the *res judicata* doctrine is that it precludes relitigation between the same parties not only of claims that were raised in the initial proceeding, but also of those relevant claims that could have been raised then.").
- 21 *Cleary v. Smith*, No. 3AN-81-5274 Ci., Final Settlement Agreement and Order (Alaska Super., September 21, 1990).
- 22 *State v. Anthony*, 816 P.2d 1377, 1378 (Alaska 1991) (quoting *Dobbert v. Florida*, 432 U.S. 282, 292, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977)).
- 23 *Hageland Aviation Serv., Inc. v. Harms*, 210 P.3d 444, 451-52 (Alaska 2009) (internal footnotes and citations omitted).
- 24 *Cleary v. Smith*, No. 3AN-81-5274 Ci., Final Settlement Agreement and Order (Alaska Super., September 21, 1990).
- 25 *See Hertz v. State, Dep't of Corr.*, --- P.3d ----, Op. No. 12842 at n. 33, 2010 WL 53112 (Alaska, January 8, 2010) (noting dicta in *Rathke v. Corr. Corp. of Am.*, 153 P.3d 303, 311 (Alaska 2007) that "the FSA 'is an enforceable contract between Alaska inmates and the state.' ")

- 26 *Hertz v. Carothers*, 174 P.3d 243, 247 (Alaska 2008).
- 27 *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 277 (Alaska 2001) (quoting *Mathis v. Sauser*, 942 P.2d 1117, 1121 (Alaska 1997)).
- 28 *Id.*
- 29 See *Hertz*, 174 P.3d at 248; *Brandon*, 28 P.3d at 277 (affirming the validity of a statute requiring prisoners to pay a portion of filing fees based on ability to pay).
- 30 Cf. *Hageland Aviation Serv., Inc. v. Harms*, 210 P.3d 444, 453 (“Chapter 19 substantially impaired the overtime compensation provision of the parties’ employment agreement when Chapter 19 ‘totally eliminated’ the pilots’ claims for unpaid overtime wages.”).
- 31 Judge Collins corrected herself by granting Hertz’s motion for reconsideration and reviewing Hertz’s response to the State’s objections.
- 32 See *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 280 (Alaska 2001) (“A party may not raise an issue for the first time on appeal.”). Our court uses “independent judgment when determining whether an issue has been waived below due to inadequate briefing.” *Lauth v. State*, 12 P.3d 181, 184 (Alaska 2000) (citing *Wilkerson v. State, Dep’t of Health & Soc. Servs., Div. of Family & Youth Servs.*, 993 P.2d 1018, 1021 (Alaska 1999)).

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

2/15/12  
Called  
in

27-LS1199\D.5  
Gardner  
2/14/12

approved

AMENDMENT

OFFERED IN THE HOUSE  
TO: HB 296

BY REPRESENTATIVE GRUENBERG

1 Page 1, line 2:

2 Delete "**relating to the definition of 'correctional facility'**"

3

4 Page 2, lines 13 - 18:

5 Delete all material and insert:

6 "(1) has construction fixtures or security features that are designed to  
7 restrict the ability of a person under official detention from leaving the facility without  
8 lawful authority; or

9 (2) has correctional officers or other persons authorized by the  
10 commissioner of corrections to prevent a person under official detention from leaving  
11 without lawful authority."

12

13 Page 2, lines 19 - 23:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 3, line 2, following "Act,":

19 Insert "and"

20

21 Page 3, lines 3 - 4:

22 Delete "and the definition of "correctional facility" in AS 11.81.900(b)(9), as amended  
23 by sec. 4 of this Act,"

1 by sec. 4 of this Act,"

7  
e

AMENDMENT |

*max G m*

OFFERED IN THE HOUSE  
TO: HB 296

BY REPRESENTATIVE GRUENBERG

- 1 Page 1, line 2, following "'correctional facility';"  
2 Insert "deleting the repeal of a provision relating to electronic monitoring as a  
3 special condition of probation and parole for offenders whose offense was related to a  
4 criminal street gang;"  
5  
6 Page 2, following line 23:  
7 Insert a new bill section to read:  
8 "\* **Sec. 5.** Section 3, ch. 27, SLA 2007, is repealed."  
9  
10 Renumber the following bill sections accordingly.

*(HB 133)*

*Sec. 3 repealed*

*AS 12.55.150 (F)*

*AS 33.16.150 (G)*

*on 12/31/12*

*Passed*

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: HB 296

*R.*

*Amnd 0.5  
OK.*

- 1 Page 1, line 2, following "**correctional facility**;"
- 2       Insert "**deleting the repeal of a provision relating to electronic monitoring as a**
- 3 **special condition of probation and parole for offenders whose offense was related to a**
- 4 **criminal street gang**;"
- 5
- 6 Page 2, following line 23:
- 7       Insert a new bill section to read:
- 8       "**\* Sec. 5. Section 3, ch. 27, SLA 2007, is repealed.**"
- 9
- 10 Renumber the following bill sections accordingly.

AMENDMENT #2

w/d

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: HB 296

Doug Gardner  
on amdt.

1 Page 1, line 2:

2 Delete "'correctional facility'"

3 Insert "'secure correctional facility'"

4

5 Page 2, lines 13 - 18:

6 Delete all material and insert:

7 "(1) has construction fixtures or security features that are designed to  
8 restrict the ability of a person under official detention from leaving the facility without  
9 lawful authority; or

10 (2) has correctional officers or other persons authorized to prevent a  
11 person under official detention from leaving without lawful authority."

}  
orig.  
may be  
better

12

13 Page 2, lines 19 - 23:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 3, line 2, following "Act,":

19 Insert "and"

20

21 Page 3, lines 3 - 4:

OG: broader

22 Delete "and the definition of "correctional facility" in AS 11.81.900(b)(9), as amended ✓  
23 by sec. 4 of this Act,"

OG: may be other  
definit of correc. facil.

2/10/12

27-LS1199\D.4  
Gardner  
2/10/12

AMENDMENT

OFFERED IN THE HOUSE  
TO: HB 296

BY REPRESENTATIVE GRUENBERG

1 Page 1, line 2:

2 Delete "**correctional facility**"

3 Insert "**secure correctional facility**"

4

5 Page 2, lines 13 - 18:

6 Delete all material and insert:

7 "(1) has construction fixtures or security features that are designed to  
8 restrict the ability of a person under official detention from leaving the facility without  
9 lawful authority; or

10 (2) has correctional officers or other persons authorized to prevent a  
11 person under official detention from leaving without lawful authority."

12

13 Page 2, lines 19 - 23:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 3, line 2, following "Act,":

19 Insert "and"

20

21 Page 3, lines 3 - 4:

22 Delete "and the definition of "correctional facility" in AS 11.81.900(b)(9), as amended  
23 by sec. 4 of this Act,"

Amndt 2

Draft Amendment to HB296

Page 2, lines 11-18: delete all text

Insert: "(c) In this section, "secure correctional facility" means a correctional facility that

- (1) has construction fixtures or security features that are designed to restrict the ability of a person under official detention from leaving the facility without lawful authority; or
- (2) has correctional officers or other persons authorized to prevent a person under official detention from leaving the facility without lawful authority."

Page 2, lines 19-23: delete all text

Renumber sections accordingly

Page 3, lines 3-4: delete "and the definition of "correctional facility" in AS 11.81.900(b)(9) as amended by sec. 4 of this Act,"

**AMENDMENT**

OFFERED IN THE HOUSE  
TO: HB 296

BY REPRESENTATIVE GRUENBERG

no.

1 Page 1, line 2, following "**correctional facility**":

2 Insert "**making arson in the first degree and arson in the second degree serious**  
3 **felonies for purposes of application of the crime of conspiracy;**"

4

5 Page 1, following line 7:

6 Insert a new bill section to read:

7 "**\* Sec. 2.** AS 11.31.120(h)(2) is amended to read:

8 (2) "serious felony offense" means an offense

9 (A) against the person under AS 11.41, punishable as an  
10 unclassified or class A felony;

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

13 (C) that is criminal mischief in the first degree under  
14 AS 11.46.475; [OR]

15 (D) that is terroristic threatening in the first degree under  
16 AS 11.56.807; or

17 (E) that is arson in the first degree under AS 11.46.400 or  
18 arson in the second degree under AS 11.46.410."

19

20 Renumber the following bill sections accordingly.

21

22 Page 3, line 1, following "to":

23 Insert "the definition of "serious felony offense" in AS 11.31.120(h)(2), as amended

1 by sec. 2 of this Act,"

2

3 Page 3, line 2:

4 Delete "sec. 2"

5 Insert "sec. 3"

6

7 Page 3, line 3:

8 Delete "sec. 3"

9 Insert "sec. 4"

10

11 Page 3, line 4:

12 Delete "sec. 4"

13 Insert "sec. 5"



# LAWS OF ALASKA

2007

**Source**  
CSHB 133(FIN)

**Chapter No.**  
\_\_\_\_\_

## AN ACT

Relating to requiring electronic monitoring as a special condition of probation and parole for offenders whose offense was related to a criminal street gang.

---

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to requiring electronic monitoring as a special condition of probation and parole for  
2 offenders whose offense was related to a criminal street gang.

3

4 \* **Section 1.** AS 12.55.100 is amended by adding a new subsection to read:

5 (f) While on probation and as a special condition of probation for an offense  
6 where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or  
7 admitted, the court shall require that the defendant submit to electronic monitoring.  
8 Electronic monitoring under this subsection must provide for monitoring of the  
9 defendant's location and movements by Global Positioning System technology. The  
10 court shall require a defendant serving a period of probation with electronic  
11 monitoring as provided under this subsection to pay all or a portion of the costs of the  
12 electronic monitoring, but only if the defendant has sufficient financial resources to  
13 pay the costs or a portion of the costs. A defendant subject to electronic monitoring  
14 under this subsection is not entitled to a credit for time served in a correctional facility

1 while the defendant is on probation. In this subsection, "correctional facility" has the  
2 meaning given in AS 33.30.901.

3 \* **Sec. 2.** AS 33.16.150 is amended by adding a new subsection to read:

4 (g) In addition to other conditions of parole imposed under this section for a  
5 prisoner serving a sentence for an offense where the aggravating factor provided in  
6 AS 12.55.155(c)(29) has been proven or admitted, the board shall impose as a  
7 condition of special medical, discretionary, and mandatory parole a requirement that  
8 the prisoner submit to electronic monitoring. Electronic monitoring under this  
9 subsection must provide for monitoring of the prisoner's location and movements by  
10 Global Positioning System technology. The board shall require a prisoner serving a  
11 period of probation with electronic monitoring as provided under this subsection to  
12 pay all or a portion of the costs of the electronic monitoring, but only if the prisoner  
13 has sufficient financial resources to pay the costs or a portion of the costs. A prisoner  
14 subject to electronic monitoring under this subsection is not entitled to a credit for  
15 time served in a correctional facility while the defendant is on parole. In this  
16 subsection, "correctional facility" has the meaning given in AS 33.30.901.

17 \* **Sec. 3.** AS 12.55.100(f) and AS 33.16.150(g) are repealed December 31, 2012.

27-LS1199I  
Gardner  
1/19/12

**HOUSE BILL NO.**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

**BY**

**Introduced:**

**Referred:** JUD

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to service of process on prisoners; relating to the crime of escape;  
2 relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of  
3 Civil Procedure; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** AS 09.05.050 is amended by adding a new subsection to read:

6 (c) In this section, "correctional facility" has the meaning given in  
7 AS 33.30.901.

8 \* **Sec. 2.** AS 11.56.310(a) is amended to read:

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

11 (1) removes oneself from

12 (A) a secure correctional facility while under official detention  
13 for a misdemeanor;

14 (B) official detention for a felony or for extradition; or

1 (C) official detention and, during the escape or at any time  
2 before being restored to official detention, one possesses on or about oneself a  
3 firearm;

4 (2) violates AS 11.56.335 or 11.56.340 and, during the time of the  
5 unlawful evasion or at any time before being restored to official detention, one  
6 possesses on or about oneself a firearm; or

7 (3) removes, tampers with, or disables the electronic monitoring  
8 equipment, or leaves one's residence or other place designated by the commissioner of  
9 corrections for the service by electronic monitoring of official detention for a felony.

10 \* **Sec. 3.** AS 11.56.310 is amended by adding a new subsection to read:

11 (c) In this section, "secure correctional facility" means a correctional facility  
12 that

13 (1) uses construction fixtures or other restraints designed to restrict  
14 physically the physical movements and activities of persons under official detention;  
15 or

16 (2) employs correctional officers or other facility staff charged with  
17 preventing persons under official detention from departing the facility without lawful  
18 authorization.

19 \* **Sec. 4.** AS 11.81.900(b)(9) is amended to read:

20 (9) "correctional facility" means a prison, jail, camp, farm, halfway  
21 house, group home, holding facility, or other placement [PREMISES, OR A  
22 PORTION OF PREMISES,] used for housing [THE CONFINEMENT OF] persons  
23 under official detention;

24 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
25 read:

26 INDIRECT COURT RULE CHANGE. AS 09.05.050, including the amendment made  
27 by sec. 1 of this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure,  
28 relating to service of process on prisoners committed to the custody of the commissioner of  
29 corrections.

30 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1           APPLICABILITY. The changes made to the crime of escape in the second degree  
2 under AS 11.56.310(a), as amended by sec. 2 of this Act, the definition of "secure correctional  
3 facility" in AS 11.56.310(c), added by sec. 3 of this Act, and the definition of "correctional  
4 facility" in AS 11.81.900(b)(9), as amended by sec. 4 of this Act, apply to offenses occurring  
5 on or after the effective date of this Act.

6       \* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

## Melanie Lesh

---

**From:** Nancy Meade <NMeade@courts.state.ak.us>  
**Sent:** Tuesday, January 31, 2012 12:33 PM  
**To:** Melanie Lesh  
**Subject:** HB 296

Hi Melanie –

HB 296 is scheduled to be heard in the House Judiciary Committee meeting tomorrow. I wanted to let you know that the court has no position on the bill, but normally I would attend the hearing because it does say that it indirectly amends a court rule. Unfortunately, I have a conflict tomorrow, and need to be in another hearing at the same time. Please feel free to call me or let me know if I can answer any questions about it.

*Nancy Meade  
General Counsel  
Alaska Court System  
Anch: 907-264-8264  
Juneau: 907-463-4736*

1/18/12

back  
PS  
→

**Legal Services recommends legislative review of the following eight (8) court cases:**

W.O.  
999  
2/3 vote  
to amend  
Civil Rule

1. Hertz v. Carothers, 225 P. 3d 571 (Alaska 2010)

**Court decision:** Service of process on the prisoner was invalid as the trooper delivered the process to the superintendent and the process was later faxed to the prison and delivered to the prisoner.

Legal Services recommends legislative review of AS 09.38.080, AS 09.38.085, and Alaska Civil Rule 4 to determine a) if there needs to be specific guidance and procedures for the service of process to inmates in correctional facilities; and b) if prison guards should be included in the definition of "peace officers" for the purpose of service.

09.09.050  
09.05.050

2. Planned Parenthood v. Campbell, 232 P. 3d 725 (Alaska 2010)

**Court Decision:** The Parental Involvement Initiative summary may be corrected after the petition is signed and is allowed to remain on the ballot.

Legal Services recommends legislative review of AS 15.45.090(a) to revisit and clarify standards for ballot initiatives.

3. West v. State, \_\_ P.3d \_\_ (Alaska 2010)

**Court Decision:** Predator control requires adherence to sustained yield principles.

Legal Services recommends legislative review of AS 16.05.255 and Article VIII, section 4 of the Constitution of the State of Alaska to determine whether the Supreme Court correctly applied the Predator Control statute in this case.

4. Mat-Su Valley Medical Center v. Advanced Pain Centers of Alaska, 218 P.3d 698 (Alaska 2010)

**Court Decision:** Interpretation of Certificate of Need statute confers standing, even after administrative appeal period, because Mat-Su Valley Medical Center is a member of the public.

Legal Services recommends legislative review of AS 18.07.091(a) to determine whether the Supreme Court correctly applied the CON statute in this case.

5. Shehata v. Salvation Army, 225 P.3d 1106 (Alaska 2010)

**Court Decision:** An injured employee has no affirmative duty to disclose information that would affect a right to workers compensation, unlike the affirmative duty required for unemployment benefits.

Legal Services recommends legislative review of AS 23.30.250 to determine if there needs to be disqualification standards for worker's compensation similar to existing standards for unemployment benefits.

6. Osterkamp v. Stiles, 235 P.3d 178 (Alaska 2010)

**Court Decision:** Custody and visitation of a former foster child may not include consideration of foster parent status for the purposes of determining "psychological parent" status.

Legal Services recommends legislative review of AS 25.23.130 to determine whether the Supreme Court correctly interpreted the state policy on foster parent status as it relates to custody rights.

7. Bradshaw v. State, 224 P.3d 118 (Alaska 2010)

**Court Decision:** The ten-year statute of limitations does not bar the DMV from charging a \$100 fee upon reinstatement of a driver's license.

Legal Services recommends legislative review of AS 28.15.211 to determine whether a) the Supreme Court correctly interpreted the driver's license reinstatement fee statute; and b) the reinstatement fee should apply to the specific type of suspension applicable to this case.

8. Weimer v. Continental Care and Truck, LLC, 237 P.3d 610 (Alaska 2010)

**Court Decision:** The Consumer Protection Act statute of limitations begins at the time of loss, not at the time of the discovery of the illegal act.

Legal Services recommended legislative review of AS 45.50.471(b) to determine if the Supreme Court correctly interpreted the statute of limitations in the Consumer Protection Act.

**Legal Services *conditionally* recommends legislative review of the following four (4) court cases, if the legislature feels the current statutes are not sufficient:**

1. Hillstrand v. City of Homer, 218 P.3d 685 (Alaska 2009)

**Court Decision:** When taking land by eminent domain for a public building or grounds, land may be taken for subsidiary features provided those features are necessary to accomplish the purpose of the taking.

Legal Services recommends legislative review of AS 09.55.250, if the legislature desires to restrict the Supreme Court's application of this statute through this case.

2. Alexie v. State, 229 P.3d 217 (Alaska App. 2010)

**Court Decision:** The Court must accept a legislative determination of imposing the same punishment for different crimes.

Legal Services recommends legislative review of AS 11.41.200 and AS 12.55.125(c), *if* the legislature desires to review the presumptive sentencing ranges for manslaughter and first degree assault.

3. Anderson v. Alyeska Pipeline Service Co., 234 P.3d 1282 (Alaska 2010)

**Court Decision:** The Project Owner statute prevents an employee of a subcontractor from suing the owner of the project for injuries received while working on the project.

Legal Services recommends legislative review of AS 23.30.045 and AS 23.30.055, *if* the legislature desires to address the “difficult” hypothetical examples that came out of this case relating to small business owners as project owners.

4. Alvarez v. State, \_\_\_ P.3d \_\_\_ (Alaska 2010)

**Court Decision:** Criminal law “speedy trial” requirements do not apply to driver’s license suspension or revocation proceedings.

Legal Services recommends legislative review of AS 28.15.165, *if* the legislature wishes to impose a time limit on continuances in driver’s license suspension hearings.

1/12

re: charging \$.

Doug Gardner § on books already (Rule 11) <sup>Rep. Govt.</sup> amt. \$ recovered <sup>from defend.</sup>

AB 09.09 or 09.05

only indirect court rule Δ. and sec. defining  
'correctional facility' or retroactive on sec. 3 Doug → (i)

Court System will prefer 999 (the 2/3 vote Rule Δ)

27-LS0999\A  
Luckhaupt  
9/16/11

**HOUSE BILL NO.**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY**

**Introduced:**  
**Referred:**

HJUD  
Sponsor?  
poll  
members

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to service of process on prisoners; and amending Rule 4, Alaska Rules**  
2 **of Civil Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 09.05.050 is amended by adding a new subsection to read:

5 (c) In this section, "correctional facility" has the meaning given in  
6 AS 33.30.901.

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

9 **INDIRECT COURT RULE CHANGE.** AS 09.05.050, including the amendment made  
10 by sec. 1 of this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure,  
11 relating to service of process on prisoners committed to the custody of the commissioner of  
12 corrections.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

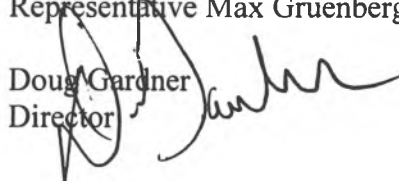
## MEMORANDUM

January 24, 2012

**SUBJECT:** Requirement of a Conditional Effect Section for a Bill Indirectly Amending a Court Rule (Work Order No. 27-LS1199A)

**TO:** Representative Max Gruenberg

**FROM:** Doug Gardner  
Director



Your question is whether the above-referenced bill draft requires a conditional effect section. The answer is no. I note that there is no question that the proposed bill indirectly amends Civil Rule 4 regarding service of process on persons incarcerated at correctional facilities. I believe that you spoke with Legislative Counsel and Assistant Revisor Jerry Luckhaupt regarding this matter, and that his advice to you was that a conditional effect section is not necessary in this bill given the unique procedural circumstances of AS 09.05.050.

As you requested, this bill utilizes the process already in place in AS 09.05.050, and an indirect rule change to Civil Rule 4, to address the service of process problems that the State confronted in serving Mr. Hertz in *Hertz v. Carrothers*, 225 P.3d 571 (Alaska 2010). Indirect amendment of a court rule requires a two-thirds vote of each body for passage of the bill and amendment of the court rule at issue, as required by article IV section 15, Alaska Constitution. This issue is discussed in the *Manual of Legislative Drafting*, pp. 48 - 51 (2011 ed.). In this case, put simply, the cart is before the horse, and no conditional effect section is necessary. Here's why.

In most cases, the statutory provision in a bill that amends a court rule is being presented in the bill at the same time that the legislature desires to indirectly amend the court rule in question. In this case the circumstances are different. AS 09.05.050 is already on the books. While section 1 of the bill does amend AS 09.05.050 by adding a definition of "correctional facility," it is section 5 of the bill which expresses the Legislature's intent to indirectly amend the court rule. Section 5 of the bill is the operative section requiring two-thirds vote of each body to achieve the court rule amendment.

The situation confronted by this bill is that when AS 09.05.050 was originally passed it was not presented with a notice of indirect amendment of court rule, or with a conditional effect section. So, AS 09.05.050 passed without a specific two-thirds vote of both houses authorizing an indirect amendment of the court rule. But, without a conditional effect section, AS 09.05.050 became law despite the fact that it did not achieve the entire

Representative Max Gruenberg  
January 24, 2012  
Page 2

objective intended of providing a process for serving incarcerated persons recognized as valid by Civil Rule 4. So, the service procedure in the Civil Rule 4 continued to trump the procedure set forth for serving prisoners in AS 09.05.050, and continues to do so.

In this bill, *if* the process in AS 09.05.050 were included in this bill, *then* it would be necessary to include a conditional effect section to make clear that unless the indirect court rule provision received a two-thirds vote, AS 09.50.050 would not take effect, and cause AS 09.05.050 to sit on the books having no utility as a means of achieving valid service of process on incarcerated persons. However, since the procedures in AS 09.05.050 are already on the books, there is no need to put a conditional effect section in this bill to prevent the dilemma that already exists: a statute that does not achieve the purpose of providing a service mechanism for incarcerated persons. So, now that the cart has been before the horse since 1989, we recommend that a conditional effect section not be included in this bill.

DDG:ljw  
12-046.ljw

Mel

WORK DRAFT

WORK DRAFT

WORK DRAFT

27-LS1199I  
Gardner  
1/19/12

*☆ Mel request  
Rep Greenberg  
△'s*

**HOUSE BILL NO.**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY**

**Introduced:  
Referred:**

*Other § doesn't have  
the effect of amending  
Court Rule 4.*

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to service of process on prisoners; relating to the crime of escape;**  
2 **relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of**  
3 **Civil Procedure; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1.** AS 09.05.050 is amended by adding a new subsection to read:

6 (c) In this section, "correctional facility" has the meaning given in  
7 AS 33.30.901.

8 **\* Sec. 2.** AS 11.56.310(a) is amended to read:

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

11 (1) removes oneself from

12 (A) a secure correctional facility while under official detention  
13 for a misdemeanor;

14 (B) official detention for a felony or for extradition; or

1 (C) official detention and, during the escape or at any time  
 2 before being restored to official detention, one possesses on or about oneself a  
 3 firearm;

4 (2) violates AS 11.56.335 or 11.56.340 and, during the time of the  
 5 unlawful evasion or at any time before being restored to official detention, one  
 6 possesses on or about oneself a firearm; or

7 (3) removes, tampers with, or disables the electronic monitoring  
 8 equipment, or leaves one's residence or other place designated by the commissioner of  
 9 corrections for the service by electronic monitoring of official detention for a felony.

10 \* Sec. 3. AS 11.56.310 is amended by adding a new subsection to read:

11 (c) In this section, "secure correctional facility" means a correctional facility  
 12 that

13 (1) uses construction fixtures or other restraints designed to restrict  
 14 physically the physical movements and activities of persons under official detention;  
 15 or

16 (2) employs correctional officers or other facility staff charged with  
 17 preventing persons under official detention from departing the facility without lawful  
 18 authorization.

19 \* Sec. 4. AS 11.81.900(b)(9) is amended to read:

20 (9) "correctional facility" means a prison, jail, camp, farm, halfway  
 21 house, group home, holding facility, or other placement [PREMISES, OR A  
 22 PORTION OF PREMISES,] used for housing [THE CONFINEMENT OF] persons  
 23 under official detention;

24 \* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to  
 25 read:

26 INDIRECT COURT RULE CHANGE. AS 09.05.050, including the amendment made  
 27 by sec. 1 of this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure,  
 28 relating to service of process on prisoners committed to the custody of the commissioner of  
 29 corrections.

30 \* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to  
 31 read:

*new version 1/21*

*[+ Conditional effect section Pg. 51 of manual*

1           APPLICABILITY. The changes made to the crime of escape in the second degree  
2 under AS 11.56.310(a), as amended by sec. 2 of this Act, the definition of "secure correctional  
3 facility" in AS 11.56.310(c), added by sec. 3 of this Act, and the definition of "correctional  
4 facility" in AS 11.81.900(b)(9), as amended by sec. 4 of this Act, apply to offenses occurring  
5 on or after the effective date of this Act.

6       \* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

*Dept. Law  
had voiced  
concerns  
on the  
holding in  
the case.*

27-LS1199B  
Gardner  
1/12/12

*Rick S. 02  
felt the*

*poll the members.*

**HOUSE BILL NO.**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

**BY**

**Introduced:**

**Referred:**



**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the crime of escape and to the definition of correctional facilities in**  
2 **the criminal code."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

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

7 (1) removes oneself from

8 (A) a secure correctional facility while under official detention  
9 for a misdemeanor;

10 (B) official detention for a felony or for extradition; or

11 (C) official detention and, during the escape or at any time  
12 before being restored to official detention, one possesses on or about oneself a  
13 firearm;

14 (2) violates AS 11.56.335 or 11.56.340 and, during the time of the

1 unlawful evasion or at any time before being restored to official detention, one  
2 possesses on or about oneself a firearm; or

3 (3) removes, tampers with, or disables the electronic monitoring  
4 equipment, or leaves one's residence or other place designated by the commissioner of  
5 corrections for the service by electronic monitoring of official detention for a felony.

6 \* Sec. 2. AS 11.56.310 is amended by adding a new subsection to read:

7 (c) In this section, "secure correctional facility" means a correctional facility  
8 that

9 (A) uses construction fixtures or other restraints designed to  
10 restrict physically the physical movements and activities of persons under  
11 official detention; or

12 (B) employs correctional officers or other facility staff charged  
13 with preventing persons under official detention from departing the facility  
14 without lawful authorization.

15 \* Sec. 3. AS 11.81.900(b)(9) is amended to read:

16 (9) "correctional facility" means a prison, jail, camp, farm, halfway  
17 house, group home, holding facility, or other placement [PREMISES, OR A  
18 PORTION OF PREMISES,] used for housing [THE CONFINEMENT OF] persons  
19 under official detention;

20 \* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 APPLICABILITY. The changes made to the crime of escape in the second degree  
23 under AS 11.56.310, as amended by sec. 1 of this Act, the definition of "secure correctional  
24 facility" in AS 11.56.310(c), added by sec. 2 of this Act, and the definition of "correctional  
25 facility" in AS 11.81.900(b)(9), as amended by sec. 3 of this Act, apply to offenses occurring  
26 on or after the effective date of this Act.



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1969  
<http://www.ajc.state.ak.us>

(907) 279-2526 FAX (907) 276-5046  
E-mail: [postmaster@ajc.state.ak.us](mailto:postmaster@ajc.state.ak.us)

## Press Release

### ***Alaska Judicial Council announces report on Pilot PACE Probation Program***

*September 16, 2011*

The Alaska Judicial Council announced today that it has completed a preliminary evaluation of the Anchorage PACE pilot program that began operation in July 2010. Probation Accountability with Certain Enforcement (PACE) monitored at-risk probationers with drug or alcohol-testing conditions to assure their compliance, through random testing for substance abuse and tracking participants' appointments with their probation officers. An essential part of the program is collaboration among law enforcement, prosecutor, defense attorney, judges and the probation office to assure that probationers who violate the requirements of the program are quickly arrested and brought before a judge, who usually imposes an immediate sanction. The preliminary evaluation found that the data available showed that PACE appeared to be successful at reducing positive drug tests, with nearly two-thirds of the PACE probationers free of any positive drug tests during the three month followup period. In contrast, only one-fifth of those probationers were free of positive drug tests prior to their participation in PACE. Although some results were promising, definitive conclusions about the project's success will require more data and further evaluation.

Alaska's Criminal Justice Working Group, co-chaired by Chief Justice Walter Carpeneti and Attorney General John Burns, endorsed the pilot PACE program. The Criminal Justice Working Group collaborates on ways to improve Alaska criminal justice system. It includes the commissioners of administration, corrections, health and social services, and public safety, other top policymakers from the state, the chief of the Anchorage Police Department, the U.S. Marshall, and

the directors of the court system, the Mental Health Trust Authority, and the Judicial Council. The group is staffed by the Judicial Council with funding by the Alaska Legislature. Although the PACE program itself was carried out with the agencies' existing resources, the Mental Health Trust Authority provided some of the funding needed for start-up training.

The PACE project showed that innovations in the criminal justice process can be undertaken through collaboration. The Anchorage Police Department served most of the warrants for arrest when PACE probationers did not comply with the conditions of the program. The court, defense attorneys and prosecutors, and probation department used existing resources to provide additional drug testing, and the attorney, judge and staff time needed for the PACE hearings. The Institute for Social and Economic Research at UAA provided the expertise needed to compile and analyze the data.

In addition to its role on the Working Group, the Judicial Council has a constitutional mandate to conduct studies to improve the administration of justice in Alaska. For more information contact:

Larry Cohn, Executive Director  
Alaska Judicial Council  
[lcohn@ajc.state.ak.us](mailto:lcohn@ajc.state.ak.us)  
[www.ajc.state.ak.us](http://www.ajc.state.ak.us)  
(907) 279-2526 x1

---

# **Anchorage PACE**

## **Probation Accountability with Certain Enforcement**

**A Preliminary Evaluation of the Anchorage Pilot PACE Project**

**September 2011**

---

**alaska judicial council**

---



---

**Anchorage PACE**  
**Probation Accountability with Certain Enforcement**  
**A Preliminary Evaluation of the Anchorage Pilot PACE Project**

**September 2011**

---

**Teresa W. Carns (AJC) and Dr. Stephanie Martin (ISER)**

Contact:

Larry Cohn, Executive Director  
Alaska Judicial Council  
1029 West Third Avenue, Suite 201  
Anchorage, AK 99501

(907) 279-2526  
[www.aj.state.ak.us](http://www.aj.state.ak.us)

## Acknowledgments

The impetus to create the PACE program as a pilot project in Anchorage came from the Department of Corrections. In October of 2009, then-Special Assistant to the Commissioner, Carmen Gutierrez, assembled stakeholders from the Division of Probation, the Alaska Court System, the Anchorage Police Department, the Anchorage offices of the district attorneys, public defense and Office of Public Advocacy, and other stakeholders to discuss the possibility of following the HOPE model to reduce the significant problems caused by increasing numbers of petitions to revoke probation. The team researched the HOPE model, considered the feasibility of carrying out a similar program in Anchorage, went to Hawaii for training, and in July of 2010 inducted the first PACE probationers. Since then, they have spent substantial time and effort to make PACE a workable program.

We would like to recognize the contributions of Keith Thayer and Jo Ann Wallace, supervisors in the Anchorage Probation office; Kim (Matt) Matthews and Rebecca Tuominen, the probation officers who have worked with all of the PACE participants; Judges William Morse and John Suddock who have heard the PACE cases; Tiffany Harkleroad and her criminal court clerk staff who have handled the paperwork; Clint Campion and Emma Haddix, Assistant District Attorneys; John Cashion, Assistant Public Defender; Brendan Kelly, Office of Public Advocacy; Sgt. Chris Jones and Lt. Richard Stouff of the Anchorage Police Department who assured the service of arrest warrants; and Judicial Services, the office that handled the PACE probationers when they were in custody. Research interns Leigh Coppola and Katherine Jackstadt invested many hours working with ISER to compile the data for the report.

Judge Steven Alm and the Hawaii HOPE stakeholders provided support, encouragement and training that made the project possible, and Dr. Angela Hawken's work was a model for this evaluation.

## Table of Contents

Part 1: Background .....	1
A. Introduction .....	1
B. Description of PACE .....	1
1. Background .....	1
2. Program .....	2
3. Stakeholder roles .....	3
4. The PACE process .....	3
C. Evaluation Methodology .....	4
1. Outcome measures .....	4
2. Study subjects and controls .....	4
a. Pace participants .....	4
b. Control probationers .....	5
3. Data .....	5
4. Analysis and report .....	6
Part 2: Findings .....	7
A. Drug use appeared to drop after beginning PACE .....	7
B. The majority of PACE participants had no drug test failures during the first three months .....	9
C. PACE participants had more recorded probation violations after starting the program, an expected result of PACE .....	10
D. Three PACE participants were arrested on new charges during the three months after starting the program .....	11
E. Not enough data were available to measure other outcomes .....	12
Part 3: Conclusions and Suggestions .....	13

# Anchorage PACE Pilot Evaluation

## Part 1: Background

### A. Introduction

On July 12, 2010, Anchorage judges conducted the first warning hearings for the initial group of twenty-nine probationers assigned to the PACE – Probation Accountability with Certain Enforcement – pilot program. Modeled after Project HOPE in Hawaii,<sup>1</sup> Anchorage’s PACE added another fifty-one probationers between November 2010 and February 2011.<sup>2</sup> This report describes the progress of the program, and the data on outcomes collected between July 2010 and June 2011.

### B. Description of PACE

#### 1. Background

In October 2009, the Department of Corrections, Anchorage judges, attorneys and others began to discuss the increasingly unmanageable number of probation violations filed monthly in the Anchorage superior court.<sup>3</sup> About 25 petitions each week to revoke probation because of technical violations were being filed in the Anchorage court. These required court, probation officer, and defense and prosecuting attorney time. Probation officers believed that the process was not as effective as it could have been.

---

<sup>1</sup> Hawaii Opportunity Probation with Enforcement, started by Judge Steven Alm in 2004. See A. Hawken and M. Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE*, 2009, for description and evaluation of the Project HOPE.

<sup>2</sup> A total of seventy-nine probationers were assigned to PACE between July 2010 and February 2011 – 29 in July 2010; 18 in November 2010; 18 in January 2011; and 14 in February 2011. Of these, the fourteen in the February group were not included in the analysis because the data were not collected due to a miscommunication. Two of the November probationers moved out of Anchorage after assignment to PACE, and no information was available for them. A total of 63 PACE inductees were available for the analysis.

<sup>3</sup> Alaska has formal probation supervision only for offenders convicted of a felony. Although misdemeanor offenders spend time on probation, there is no formal supervision of their overall activities.

Members of the group decided to try a pilot probation monitoring and enforcement project modeled after Project HOPE in Hawaii.<sup>4</sup> They consulted extensively with Judge Alm,<sup>5</sup> who arranged for an Alaskan team to meet with their counterparts in the Honolulu law enforcement, court, prosecutors, probation and defense attorneys' offices.<sup>6</sup> During the week of July 12 - 16, 2010, Judges Morse and Suddock who had volunteered for the program gave warning hearings to the first twenty-nine offenders. Another 50 probationers were inducted in November 2010, and January and February 2011. The November, January, and February inductees were part of a group whose members were randomly assigned to PACE or probation as usual.<sup>7</sup>

The pilot program was carried out with the cooperation of all of the agencies involved, and without additional resources. The size of the initial group of probationers assigned was based on the capacity of the stakeholders to assume any extra work associated with the program using only existing staff and funds for drug testing. The Alaska Judicial Council (Council) funded the evaluation, monitored the PACE progress and wrote the report. The Institute for Social and Economic Research (ISER) at the University of Alaska Anchorage collected the data and conducted the analysis.

## 2. Program

Probationers assigned to PACE were required to comply with all probation conditions, including random drug testing and periodic meetings with their probation officers. A positive drug or alcohol test, failure to appear for a scheduled test, or failure to attend a meeting with the probation officer were the three conditions targeted in the PACE program. If offenders failed to comply with any one of these, they were immediately arrested or a warrant was issued for their arrest. A court hearing was scheduled, usually within 72 hours. At the hearing, the judge imposed a sanction of a short jail term, generally two to three days. If the offender violated again, the process was repeated, with another sanction. The essence of the program was that every single violation that was included in the PACE program was dealt with quickly, and a sanction was imposed each time.

---

<sup>4</sup> *Supra*, note 1.

<sup>5</sup> Judge Steven Alm of Honolulu, Hawaii, designed and developed the HOPE program. See *Managing Drug Involved Probationers*, *supra*, note 1.

<sup>6</sup> The Alaska Mental Health Trust Authority provided much of the funding for the training-related travel.

<sup>7</sup> See Methodology *infra* for discussion of the difficulties with the control group.

Probationers were not allowed to opt out of the program. If they completed two months without violation, the frequency of testing was usually reduced. One or more additional violations typically resulted in an increased emphasis on treatment, or in other actions by the court. Probationers did not return to court unless they were arrested; there were no scheduled status hearings as are used in the therapeutic courts.

### **3. Stakeholder roles**

Each offender was required to attend a warning hearing set before one of the project judges. After that, the judge only saw the offender if a warrant was issued for the offender's arrest because of violation of a condition. If the offender was arrested for a new offense, the new charges were handled through regular court channels, generally without involving the PACE judges.<sup>8</sup>

Defense attorneys, prosecutors, and probation officers participated in any scheduled sanctioning hearings. The Anchorage Police Department made serving PACE warrants a top priority, and was responsible for most of the warrants served. The Alaska State Troopers and the federal marshals also assisted with the program, as needed. The Department of Corrections supervised all violators and incarcerated all offenders.<sup>9</sup> The Department made handling the pilot PACE program one of its top priorities, and expedited any actions associated with PACE probationers.

### **4. The PACE process**

A stakeholder group that included courts, corrections, defense and prosecution, law enforcement, and the project evaluators met monthly starting in January of 2010 through May of 2011. The team continued to meet as needed to resolve issues of substance or procedure that arose during the project's operations. A wide range of issues – such as probationers moving out of town to avoid the program, court clerk workloads, criteria for assignment to the program – were dealt with by the PACE team. The PACE process was documented with public reports of the meetings. Stakeholders cooperated throughout the project to resolve problems and assure the program's effectiveness.

---

<sup>8</sup> The judges assigned to PACE normally handled only civil cases.

<sup>9</sup> Alaska has both a unified corrections system with no local or county jails, and a unified court system, with no local or county courts.

## **C. Evaluation Methodology**

### **1. Outcome measures**

To assess the effectiveness of the PACE program, stakeholders agreed to measure change in several outcomes:

- Number of positive or refused drug tests;
- Number of missed drug tests;
- Number of missed appointments with probation officers;
- Number of probation revocations;
- Number of new arrests/charges;
- Number of incarceration days served; and
- Number of positive or failed alcohol tests.

Other purposes of the project were to a) determine the extent to which the Division of Probation electronic databases would be useful for subsequent evaluations of PACE and other evidence-based programs that the Department of Corrections was interested in using to achieve its goals of rehabilitation and protection of public safety;<sup>10</sup> and b) identify any obstacles to a large scale evaluation.

### **2. Study subjects and controls**

#### **a. Pace participants**

The criteria for assignment to the program (or control group) were that the probationers be identified by the Anchorage probation office as at risk for a probation revocation for not complying with conditions of probation; that they have drug or alcohol testing as a specific condition of probation;<sup>11</sup> and that they not be on parole.<sup>12</sup> The final evaluation set of 63 PACE

---

<sup>10</sup> Evaluators and the Department of Corrections knew that it would be necessary to use paper files for some aspects of the data collection for this project.

<sup>11</sup> The data showed that 94% of the final PACE evaluation group had a condition of no drug use, and 86% were required by the original probation conditions to subject to drug testing. Ninety-seven percent had a condition of no alcohol use or no use to excess, and 35% had a condition of alcohol testing.

<sup>12</sup> Additional criteria included that the probationers not be on the specialized probation supervision caseloads for sex offenders or offenders with mental health issues, and that they not have any active probation revocation petitions outstanding.

participants included 42 males and 21 females.<sup>13</sup> The mean (average) age was 33.7 years old. Sixty-six percent of the PACE participants were Caucasian, fifteen percent were Alaska Native/American Indian, and the others were Asian-American or Black.

#### **b. Control probationers**

The PACE team experimented with identifying and tracking a randomly assigned control group for the project. For each of the PACE groups inducted between November and February, the probation office identified twice as many people as were expected to be PACE participants. ISER randomly assigned one-half of each group to PACE and the other half to the control group. There were no statistically significant differences on the characteristics of age, gender, and ethnicity between the two groups.

One of the more important findings of the pilot project was that the control group was too difficult to track to provide useful data. While the PACE participants all were supervised by two experienced probation officers, the control group members continued with their ten previously assigned probation officers.<sup>14</sup> The PACE officers were meticulous record-keepers while the other officers had varying degrees of ability. Research technicians had greater access to PACE participant files than to control group files, which were in use most of the time, making data collection impractical and sometimes interfering with the work of probation officers.

### **3. Data**

The primary data for the analysis were provided by the Division of Probation. Basic demographic and case-related data came from the Department of Corrections offender management system, ACOMS.<sup>15</sup> Data related to positive or refused drug tests were compiled from ACOMS. Most of the other evaluation-related data were collected from paper case files.

The biggest impediments to the evaluation were (1) lack of electronic data for many of the variables; (2) non-systematic reporting of appointments with probation officers, and of alcohol and drug test results for control group; and (3) omission of the February 2011 PACE participants from the analysis because of a miscommunication between the evaluators and data

---

<sup>13</sup> Two of the probationers originally in the PACE evaluation set were not in the program long enough to compile data about their experience, because they moved to other communities in the state where PACE supervision and testing were not available.

<sup>14</sup> Starting in about February, the control probationers were reassigned to three experienced probation officers.

<sup>15</sup> Alaska Corrections Offender Management System.

sources. ISER research technicians spent almost 500 hours collecting data for the 63 participants included in the evaluation and the control group probationers in the November and January groups. Some data were electronically available in the ACOMS database but inconsistencies between what was reported in ACOMS and in written documents resulted in the study using paper files as the primary data source for most information. This evaluation did not include alcohol violations, missed appointments, or incarceration days because consistent data were missing for many or all of the participants during the three months prior to their induction into PACE, and for all of the controls. Lack of data and inconsistent reporting also made justification of selection into PACE difficult.

Data compiled about each participant and control group probationer included date of birth, ethnicity, gender, offense of conviction, and relevant probation conditions. To measure outcomes, data – when available – were entered about missed appointments, drug tests, alcohol tests, new charges, new arrests, and new probation violations, during the three months prior to entry into PACE or designation as a control, and during the first three months after entry into PACE.

#### **4. Analysis and report**

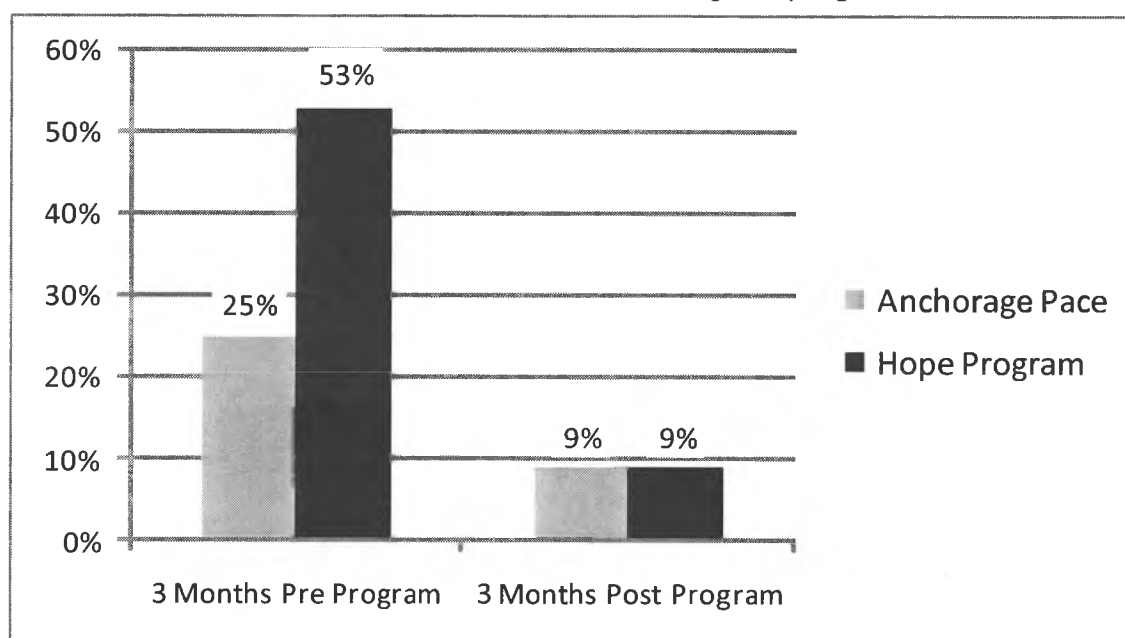
Data were analyzed by ISER, using SPSS programs. The analysis focused on the outcomes for the variables for the PACE participants during the first three months after entry into the program, as well as during the three months prior to their participation with PACE. The analysis also looked at how many violations were accumulated by each probationer. Because of the difficulties in accumulating any information about the control group, the data have been analyzed and reported without reference to controls.

## Part 2: Findings

### A. Drug use appeared to drop after beginning PACE

- Drug use by PACE participants, as measured by positive tests, appeared to decrease substantially during the three months following induction into PACE. PACE participants failed 25% of the 157 drug tests performed during the three months prior to starting the program. They failed 9% of the 587 tests conducted during the three months after the program.<sup>16</sup>

Figure 1  
Anchorage PACE participants positive drug tests compared to HOPE<sup>17</sup> positive drug tests, first three months after starting the program



- The comparable data from the Hawaii HOPE program evaluation showed a similar pattern, with the percentage of the average number of positive drug tests dropping

<sup>16</sup> Paired t-test,  $t=2.833$ ,  $p=0.006$ .

<sup>17</sup> Figure 1 compares HOPE and PACE data about drug tests for three months pre-and post starting the respective programs. For purposes of this report on PACE, we have reproduced only the HOPE results for HOPE probationers during the three months prior to beginning HOPE and the three months after beginning HOPE. The original Figure 1 in the Hawken report, supra note 1, has information about the HOPE control group, and information about drug test (urinalysis) results for six months after starting HOPE.

The following note was associated with Hawken, Figure 1, and is replicated here for completeness. "Note: Data are from PROBER. For comparison probationers, data reflect urinalysis results for regularly scheduled UAs. For HOPE probationers UAs include regularly scheduled tests, and random testing. Pre (3m) refers to the average number of positives UAs in the three months before the study state date (baseline). Follow-up (3m) refers to the average number of positive UAs in the three-month period following baseline and Follow-up (6m) refers to the average number of positive UAs in the six-month period following baseline."

substantially after the program started (in HOPE, the drop was from 53% of the probationers with positive tests before to 9% with positive tests after).<sup>18</sup>

- There were insufficient data to evaluate missed drug test appointments for PACE participants. It is possible that probationers missed drug test appointments because they knew that they would have positive results. It is difficult to assess the overall finding of a reduced number of positive drug tests without also having the data about missed drug test appointments.

---

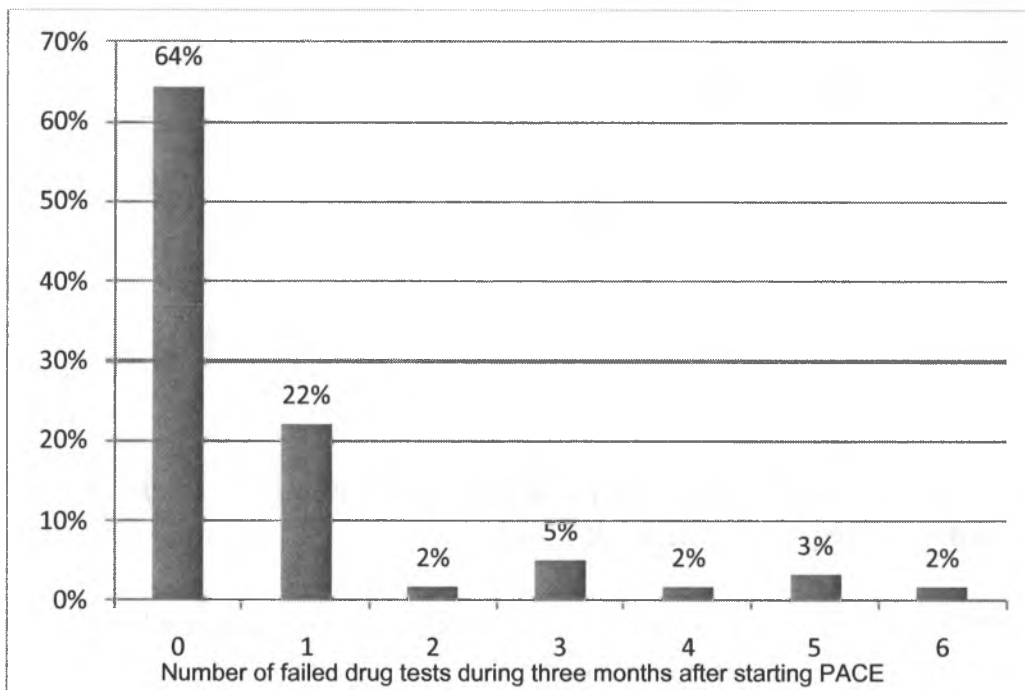
<sup>18</sup> Hawken and Kleiman, *supra* note 1, Figure 1, page 18.

**B. The majority of PACE participants had no drug test failures during the first three months**

- Of the 59 probationers in PACE with drug use conditions, 64% (N=38) had no drug test failures at all during the three months after admission to PACE, compared to 20% of the same probationers during the three months prior to PACE with no drug test failures. Of the 36% (N=21) with failed drug tests, 62% (N=13) failed only once.

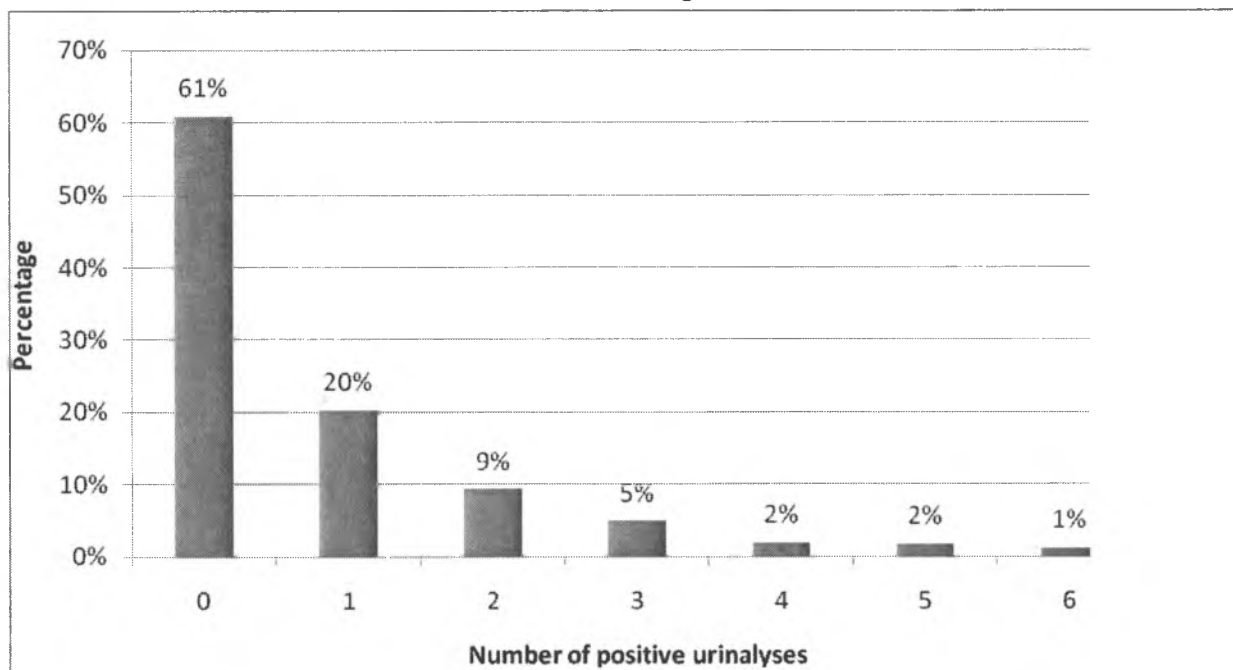
Figure 2

Number of failed drug tests for PACE participants with drug use conditions in three months after PACE



- The comparable data from the Hawaii HOPE program for a 12-month period (Figure 3) show a similar pattern, with the majority of HOPE participants having no failed drug tests, 20% having only one failed drug test, and small numbers having two or more failed drug tests. Although the pattern is similar, it is important to note that the data from PACE are for a three-month period while the HOPE data were recorded over a twelve-month period, four times as long.

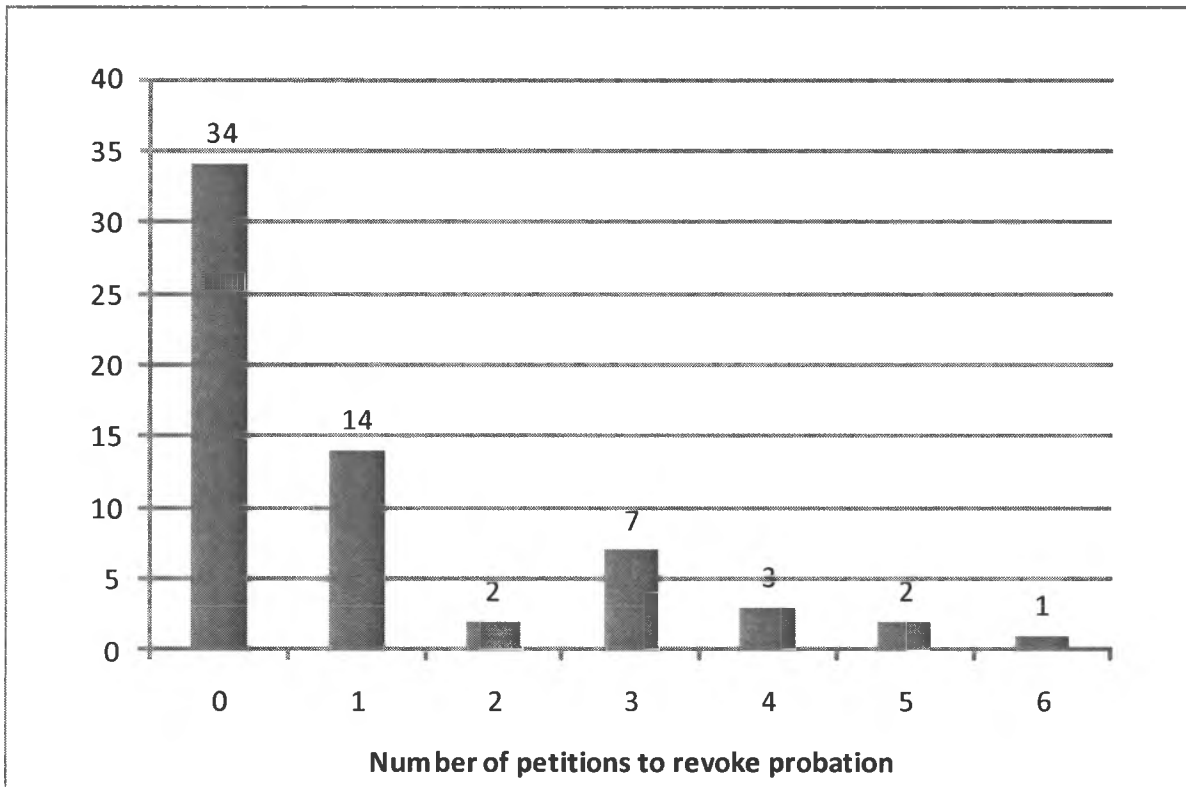
Figure 3  
HOPE:\* Number of failed drug tests in 12 -months



\* This chart replicates Figure 2 in the Hawken/Kleiman report, *supra*, note 1.

- The lack of sufficient data to measure missed drug test appointments could also have affected this finding.
- C. PACE participants had more recorded probation violations after starting the program, an expected result of PACE**
- The 63 PACE participants had a total of 40 petitions to revoke probation filed against them during the three months prior to starting PACE, and a total of 67 petitions to revoke probation filed against them during the three months following their induction into PACE.
  - A slight majority of the PACE participants did not have any petitions to revoke probation filed during the three months after they started PACE compared to a slight majority who had at least one petition before they started PACE. Otherwise the patterns to revoke probation during the pre- and post- periods were similar, with a few probationers who had several petitions. That a slight majority had no petitions filed after starting PACE suggests that the program was effective, although that cannot be firmly concluded without a more rigorous evaluation. The following figure shows the distribution of petitions to revoke probation during the three months after starting PACE.

Figure 4  
Petitions to revoke probation, during the three months after starting PACE



One of the most important features of PACE was the requirement that probationers be sanctioned for each violation of probation that was targeted in the PACE program, in contrast to the usual procedure of filing a petition to revoke probation after several violations. The premise on which the program was built, therefore, led to an expectation of an increase in petitions to revoke probation.

**D. Three PACE participants were arrested on new charges during the three months after starting the program**

One person in the PACE evaluation group was arrested four times for new offenses during the three months following induction into PACE. Two PACE participants were arrested for new charges one time each. Other PACE participants were arrested on new charges after the three-month measurement period had elapsed. Data about arrests during the three-month period

prior to entering PACE were not available to determine whether this finding showed improvement.

**E. Not enough data were available to measure other outcomes**

Several outcomes – missed appointments for drug tests, missed appointments with the probation officers, positive alcohol tests, and incarceration days – could not be measured because of insufficient data. The discussion above, in the Methodology section, outlines some of the reasons for this.

### Part 3: Conclusions and Suggestions

***PACE appeared to be successful at reducing positive drug tests.*** Data showed that the PACE group did significantly better during the three months after starting PACE than they did during the three months prior. Data about missed drug test appointments would help verify this finding.

***Sixty-four percent of the PACE participants had no drug test failures at all, compared to 20% of the same probationers who had no failed drug tests during the three months prior to starting PACE.*** About 36% of PACE participants had one failure. About one-quarter of them had only one failure. Only 14% had two or more failures. This pattern tracks closely that found in the study conducted of HOPE participants in Hawaii. Again, including missed drug test appointments in the data would help to assess the importance of this finding.

***Fifty-four percent of the PACE participants did not have any petitions to revoke probation filed against them during the test period.*** Twenty-two percent had only one petition to revoke probation filed against them during the three months after starting PACE. The patterns for the number of petitions filed per probationer were similar during the pre and post periods, with only a few probationers having three or more petitions filed in each period. Although the PACE probationers (as a group) had more petitions filed after beginning PACE than before, this was an expected outcome of the program.

The positive drug tests, new petitions to revoke probation filed, and new arrests were concentrated among a few PACE participants. This followed the HOPE model. In the evaluation of HOPE, the authors stated, “HOPE identified a small minority of probationers who did not desist from drug use under sanctions pressure alone. This ‘behavioral triage’ function – identifying those in need of treatment by documenting their actual conduct rather than relying on assessment tools – is an independent benefit of HOPE processing.”<sup>19</sup> The control group, to the extent that data were collected, also appeared to also have a few offenders who were responsible for most of the violations. However, because those violators were not monitored as closely as the PACE offenders, their violations were not dealt with as quickly.

***The data available were insufficient to track many of the other outcome measures that were planned for the pilot evaluation.*** The data available for the evaluation were not enough, particularly for the randomly assigned control group, to analyze prior criminal history, probation violations that did not result in a revocation, new arrests, and days of incarceration. One of the purposes of the project was to determine what data were available for evaluation. The present

---

<sup>19</sup> Hawken and Kleiman, *supra* note 1, Figure 1, pages 19-20.

evaluation of the pilot project showed that data were inadequate, despite considerable efforts on the part of some of the Division of Probation staff to assist in compiling data. Miscommunications did occur and the data collection process should be carefully monitored in future projects.

Future evaluations of the Anchorage PACE project and similar projects in the state should provide for more rigorous evaluations. Central to the state's ability to adequately evaluate the effectiveness of PACE are:

- Assignment of both participants and controls to a few probation officers with the ability to meticulously record all information needed for the evaluation.
- Limitation of the outcome variables to clearly defined, unambiguous measures.
- Provision of electronic means to record data rather than relying primarily on paper files. This could be done by providing a module in the Department of Corrections ACOMS management information system for entering data for all probationers, with the needed fields for this type of evaluation included.
- An opportunity for a longer-term evaluation that can assess the outcomes for PACE participants during a follow-up period after they have completed probation.
- Inclusion of a unique offender identification number that is common to other state justice information systems so that more data are available for each offender.<sup>20</sup>

---

<sup>20</sup> State agencies have agreed to use the APSIN ID number as the common identifying number for all defendants, and a project is underway to implement the conceptual agreement.

September 22, 2011

Judge William Morse  
Anchorage Superior Court  
State of Alaska  
825 West 4<sup>th</sup> Avenue  
Anchorage, Alaska 99501

Re: North Pacific Erectors, Inc. v. State of Alaska, Appeal No. 3AN-09-09085-CI

Subject: Decision

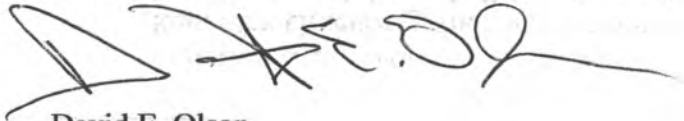
Dear Judge Morse,

If you have already issued your decision in this matter please disregard this correspondence.

This is my fifth request for you to make your decision in this case.

This case has been in your court for more than two years. The final briefing was submitted for your consideration on the 31<sup>st</sup> of May, 114 days ago. And, it has been 35 days since the final oral arguments were made. Please issue your decision in my case, so that I may move on with my life.

Sincerely,



David E. Olson  
391 Sears Creek Road  
Stites, Idaho 83552

Cc: Jeff Stark – Counsel - AKDOT&PF  
Neil Slotnick – Counsel – DOA  
Terry Martson – Counsel - NPE  
Alaska Judicial Council  
Rep. Carl Gatto, Chair, Judiciary Committee  
Rep. Steve Thompson, Vice-Chair, Judiciary Committee  
Rep. Wes Keller, Judiciary Committee  
Rep. Bob Lynn, Judiciary Committee  
Rep. Max Gruenberg, Judiciary Committee  
Rep. Lindsey Holmes, Judiciary Committee  
Rep. Mike Chenault, Judiciary Committee