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Luckhaupt
4/12/10

CS FOR HOUSE BILL NO. 324(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

*** Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.730. Failure to appear. (a) A person commits the crime of failure to appear if the person

(1) is released under the provisions of AS 12.30;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) with criminal negligence does not appear before the court or judicial officer at the time and place of the scheduled hearing.

(b) In a prosecution for failure to appear under (a) of this section, it is an affirmative defense that unforeseeable circumstances, outside the person's control, prevented the person from appearing before the court or judicial officer at the time and place of the scheduled hearing, and the person contacted the court orally and in writing immediately upon being able to make the contact.

(c) A person who commits failure to appear incurs a forfeiture of any security for any appearance of the person that was given or pledged to the court for the person's release, and is guilty of a

(1) class C felony if the person was released in connection with a charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

(2) class A misdemeanor if the person was released in connection with a

(A) charge of a misdemeanor, or while awaiting sentence or appeal after conviction of a misdemeanor; or

(B) requirement to appear as a material witness in a criminal proceeding.

*** Sec. 2.** AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in

violation of AS 11.56.740; or

(C) violated a condition of release imposed under AS 12.30.016(e) [AS 12.30.025] or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has probable [REASONABLE] cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under [THE AGE OF] 18 years of age and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release under the provisions of AS 12.30 [BEFORE TRIAL ON FELONY CHARGES BROUGHT UNDER AS 11.41.410 - 11.41.458].

* **Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person who is charged with a felony may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011(a) would not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the prosecuting authority and any surety, if applicable, have at least 48 hours' written notice before the time set for the review requested under this subsection; the defendant shall notify the surety; and

(3) at least seven days have elapsed between the previous review and the time set for the requested review.

(e) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments and any response by the person before making a decision concerning the release of the person.

(f) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(g) Information offered or introduced at a bail hearing to determine conditions of release need not conform to the rules governing the admissibility of evidence.

* **Sec. 4.** AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance

1 bond, on the condition that the person

2 (1) obey all court orders and all federal, state, and local laws;

3 (2) appear in court when ordered;

4 (3) if represented, maintain contact with the person's lawyer; and

5 (4) notify the person's lawyer, who shall notify the prosecuting
6 authority and the court, not more than 24 hours after the person changes residence.

7 (b) If a judicial officer determines that the release under (a) of this section will
8 not reasonably assure the appearance of the person or will pose a danger to the victim,
9 other persons, or the community, the officer shall impose the least restrictive condition
10 or conditions that will reasonably assure the person's appearance and protect the
11 victim, other persons, and the community. In addition to conditions under (a) of this
12 section, the judicial officer may, singly or in combination,

13 (1) require the execution of an appearance bond in a specified amount
14 of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent
15 of the amount of the bond;

16 (2) require the execution of a bail bond with sufficient solvent sureties
17 or the deposit of cash;

18 (3) require the execution of a performance bond in a specified amount
19 of cash to be deposited in the registry of the court;

20 (4) place restrictions on the person's travel, association, or residence;

21 (5) order the person to refrain from possessing a deadly weapon on the
22 person or in the person's vehicle or residence;

23 (6) require the person to maintain employment, or if unemployed,
24 actively seek employment;

25 (7) require the person to notify the person's lawyer and the prosecuting
26 authority within two business days after any change in employment;

27 (8) require the person to avoid all contact with a victim, a potential
28 witness, or a codefendant;

29 (9) require the person to refrain from the consumption and possession
30 of alcoholic beverages;

31 (10) require the person to refrain from the use of a controlled substance

as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the

1 victim, and the danger that the person poses to the victim;

2 (11) any other facts that are relevant to the person's appearance or the
3 person's danger to the victim, other persons, or the community.

4 (d) In making a finding regarding the release of a person under this chapter,

5 (1) except as otherwise provided in this chapter, the burden of proof is
6 on the prosecuting authority that a person charged with an offense should be detained
7 or released with conditions described in (b) of this section or AS 12.30.016;

8 (2) there is a rebuttable presumption that no condition or combination
9 of conditions will reasonably assure the appearance of the person or the safety of the
10 victim, other persons, or the community, if the person is

11 (A) charged with an unclassified felony, a class A felony, a
12 sexual felony, or a felony under AS 28.35.30 or 28.35.032;

13 (B) charged with a felony crime against a person under
14 AS 11.41, was previously convicted of a felony crime against a person under
15 AS 11.41 in this state or a similar offense in another jurisdiction, and less than
16 five years have elapsed between the date of the person's unconditional
17 discharge on the immediately preceding offense and the commission of the
18 present offense;

19 (C) charged with a felony offense committed while the person
20 was on release under this chapter for a charge or conviction of another offense;

21 (D) charged with a crime involving domestic violence, and has
22 been convicted in the previous five years of a crime involving domestic
23 violence in this state or a similar offense in another jurisdiction;

24 (E) arrested in connection with an accusation that the person
25 committed a felony outside the state or is a fugitive from justice from another
26 jurisdiction, and the court is considering release under AS 12.70.

27 **Sec. 12.30.016. Release before trial in certain cases.** (a) A judicial officer
28 may impose, in addition to those required or authorized under AS 12.30.011,
29 conditions of release for offenses described in this section, if necessary to reasonably
30 assure the person's appearance or the safety of the victim, other persons, or the
31 community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may order the person

(1) to refrain from

(A) consuming alcohol beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) to submit to a breath test when requested by a law enforcement officer;

(4) to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) to take a drug or combination of drugs intended to prevent substance abuse;

(6) to follow any treatment plan imposed by the court under AS 28.35.028.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may order the person

(1) to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms

of the person's release by possessing controlled substances or drug paraphernalia;

(3) to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) to refrain from being physically present, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) to refrain from the use or possession of an inhalant.

(d) In a prosecution charging misconduct involving a controlled substance under AS 11.71.020(a)(2) for the manufacture of methamphetamine, or its salts, isomers, or salts of isomers, if the person has been previously convicted in this or another jurisdiction of a crime involving the manufacturing, delivering, or possessing methamphetamine, or its salts, isomers, or salts of isomers, a judicial officer shall require the posting of a minimum of \$250,000 cash bond before the person may be released. The judicial officer may reduce this requirement if the person proves to the satisfaction of the officer that the person's only role in the offense was as an aider or abettor and that the person did not stand to benefit financially from the manufacturing.

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior.

(f) In a prosecution charging a crime under AS 11.41.410 - 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and the parent or guardian of a minor victim have been notified by a law enforcement agency or the prosecuting authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim or a parent or guardian of the minor victim who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

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

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) personally, by telephone, or by other technology approved by the court, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a

condition of release; and

(B) understands that failure to perform those duties may result in the custodian being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) the proposed custodian has been convicted in the previous three years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(5) the proposed custodian may be called as a witness in the prosecution of the person;

(6) the proposed custodian resides out of state; however a nonresident may serve as a custodian if the nonresident resides in the state while serving as custodian.

* **Sec. 6.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the **judicial officer** [COURT] shall consider the safety of the [ALLEGED] victim or other household member. To protect the [ALLEGED] victim, household member, **other persons**, and the **community** [PUBLIC] and to reasonably assure the person's appearance, the **judicial officer shall impose conditions required under AS 12.30.011, and** [COURT] may impose [BAIL AND] any of the conditions authorized under **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition necessary to protect the [ALLEGED] victim, household member, **other persons**, and the **community** [PUBLIC], and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

* **Sec. 7.** AS 12.30.027(b) is amended to read:

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence **or place of employment** of the [ALLEGED] victim or the residence **or place of employment** of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 - 18.66.180 **unless**

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence or place of employment;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the court finds by clear and convincing evidence that the return to the residence or place of employment does not pose a danger to the victim or petitioner.

* **Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

Sec. 12.30.030. Appeal from conditions of release. (a) If a person remains in custody after a review provided for in AS 12.30.006(c) or (d), an appeal may be taken to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

* **Sec. 9.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.031. Temporary release. (a) A person either before trial or after conviction who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

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

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

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

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

* **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony;

(3) a class B felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in another jurisdiction; or

(4) a felony in violation of AS 11.41, and the person has been found guilty but mentally ill.

(c) A person who has been convicted of an offense and who has filed an application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

* **Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

Sec. 12.30.050. Release of material witnesses. (a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

* **Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation for a felony crime against a person under AS 11.41 does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if it is established by a preponderance of the evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

* **Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a person [DEFENDANT] under AS 12.30.011 [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of the court establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the

person [DEFENDANT] is convicted.

* **Sec. 14.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.078. Conviction occurrence. In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

* **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "knowingly" has the meaning given in AS 11.81.900;

(5) "peace officer" has the meaning given in AS 11.81.900;

(6) "sexual felony" has the meaning given in AS 12.55.185;

(7) "stalking" means a violation of AS 11.41.260 or 11.41.270.

* **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

(12) the defendant was on release under AS 12.30 [AS 12.30.020 OR 12.30.040] for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

* **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under AS 11.56.730 [AS 12.30.060]; or

(D) under AS 12.70.

* **Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of

AS 11.56.740;

(3) violated a condition of release imposed under **AS 12.30.016(e) or (f) or 12.30.027** [AS 12.30.025, 12.30.027, OR 12.30.029].

* **Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter. **A judge may not order a peace officer to serve a petition that has been denied by the court.**

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

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Appearance Before the Judge or Magistrate.**

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. **Necessary** [UNNECESSARY] delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

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

1 DIRECT COURT RULE AMENDMENT. Rule 5(a)(2), Alaska Rules of
2 Criminal Procedure, is amended to read:

3 (2) If

4 (i) The judge or magistrate commits the arrested person
5 to jail for a purpose other than to serve a sentence, and

6 (ii) The jail is situated in a different community from
7 the place where the judge or magistrate committed the arrested person
8 to jail, and

9 (iii) The arrested person is not represented by counsel,
10 and

11 (iv) The arrested person has not previously had a bail
12 review, and

13 (v) The arrested person has no date, time and place
14 established for his or her next court appearance, then the arrested
15 person shall be taken before a judge or magistrate in the community
16 where the jail is located within **forty-eight** [TWENTY-FOUR] hours of
17 the person's detention in that jail

18 (aa) in order for bail to be reviewed, and

19 (bb) in order to determine if the person is represented by counsel, and

20 (cc) in order for [THE] counsel to be appointed, if appropriate.

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

23 DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of
24 Criminal Procedure, is amended to read:

25 (a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be
26 admitted to bail pursuant to **AS 12.30.006 - 12.30.080** [AS 12.30.010 -12.30.080].

27 * **Sec. 23.** The uncoded law of the State of Alaska is amended by adding a new section to
28 read:

29 DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of
30 Criminal Procedure, is amended to read:

31 (b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in **AS 12.30.011** [AS 12.30.010(a)];

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash [or other security], of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [or other security].

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

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

(c) **Separate Bonds.** If a performance bond is required, it must be enforced separately from any appearance or bail bond.

(1) Appearance in court may not be a condition of a performance bond. A court may not order that an appearance bond be concurrent with an appearance bond in a pending case unless the surety who posed the first appearance bond approves.

(2) The court may not change a performance or appearance bail requirement without agreement by the surety, unless

(A) the surety waives the requirement for agreement in advance and in writing; or

(B) the court, in writing, finds that the change in the condition of bail poses no increase in risk of loss to the surety and the court sets out in writing the reason for finding that there is no increase in the risk of loss to the surety.

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

DIRECT COURT RULE AMENDMENT. Rule 206(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited to the following:

(1) The full name of the appellant; the trial court case number; the offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of

the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time [OF] the motion is filed.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 603(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, the court may admit the defendant to bail and stay the sentence as provided by law and by these rules [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

* **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and 12.30.060 are repealed.

* **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b) made by sec. 2 of this Act apply to arrests for violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act apply to bail proceedings

1 occurring on and after the effective date of this Act for offenses occurring on or after the
2 effective date of this Act.

3 (d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail
4 proceedings occurring on or after the effective date of this Act for offenses occurring before,
5 on, or after the effective date of this Act.

6 (e) The amendments to AS 12.30.027(a) and (b) made by secs. 6 and 7 of this Act; to
7 AS 12.30.075 made by sec. 13 of this Act and to 12.30.080 made by sec. 15 of this Act apply
8 to bail proceedings occurring on or after the effective date of this Act for offenses occurring
9 before, on, or after the effective date of this Act.

10 (f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, made by secs. 20
11 and 21 of this Act apply to offenses occurring on or after the effective date of this Act.

12 (g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec.
13 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

14 (h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, made by
15 sec. 26 of this Act applies to convictions occurring on or after the effective date of this Act.

16 * **Sec. 29.** This Act takes effect July 1, 2010.