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CSHB 324 (BAIL REFORM)
Sectional Analysis

Section 1 of the bill moves the crime of failure to appear at a court appearance from Title 12 to Title 11. The proposed law is similar to current law with one exception -- it provides that if a person knows that he or she is required to appear, the prosecution does not have to prove an additional culpable mental state regarding the conduct of not appearing. It also provides an affirmative defense that the defendant, due to unforeseeable circumstances outside his or her control, was prevented from appearing at the hearing, and that the defendant notified the court orally and in writing immediately upon being able to make the contact.

The penalties are the same as under current law.

Section 2 includes a conforming amendment to AS 12.25.030(b). It changes the standard for a law enforcement officer to make an arrest without a warrant in certain cases from "reasonable cause" to "probable cause". The standard in AS 12.25.030(b) would then be the same as in AS 12.25.030(a). Reasonable cause and probable cause are similar.

Section 2 also allows a law enforcement officer to arrest a person for violation of conditions of release if the officer has probable cause to believe the person has violated conditions in connection with release under AS 12.30. Law enforcement supports this change because it avoids, for example, an officer having to get an arrest warrant for a person if the person is ordered not to drink alcohol and is found intoxicated.

Section 3 adopts a new section, AS 12.20.006, that describes release procedures for a person charged with a crime. Although the procedures are similar to those under various sections of existing law, there are a few differences, which include:

- Before the third and subsequent bail hearings, current law and the bill require that certain prerequisites are met – such as seven days elapse between bail hearings unless certain other factors are present. Current law requires 48 hours notice to the prosecuting authority, and the bill requires

the same notice, but it also requires 48 hours notice to any surety involved so that the surety has an opportunity to attend the hearing.

- The bill specifically requires the person being released to sign an agreement that describes the terms of the release and includes the person's promise to abide by the terms.

- The bill eliminates a provision in current law that allows a judicial officer to change, add to, or eliminate conditions of release at any time. The law already provides a process for asking the court to change conditions, and allowing a change at any time, without following the required procedures, has the potential of being unfair to the defendant, the prosecuting authority, or to the victim.

Section 4 revises the law addressing release before trial of a person charged with a crime. Proposed AS 12.30.011 adopts standards and conditions for release in general, and AS 12.30.016 adopts standards and conditions for release for specific crimes.

Proposed **AS 12.30.011** first adopts conditions that must he imposed on all persons released pending trial. They are very general – including a requirement that the person obey all laws, appear in court when ordered, and keep in contact with the person's attorney.

- Subsection (b) provides conditions that a court may impose on a person charged with a crime if, in the court's discretion the condition will reasonably assure the person's appearance and the safety of the victim, other persons, and the community. Many of these conditions are in current law. Others are included in federal bail law. Several were suggested by a retired judge who is doing contract work for the court system. There is also a general authorization for additional reasonable conditions.

- Subsection (c) describes the various circumstances that the court should consider in deciding what conditions are reasonable to impose on the person. These are similar to current law.

- Subsection (d) provides the evidentiary burdens that a court must apply in making a decision about the release of a person. Generally, the burden of proof is on the prosecuting authority to establish that particular conditions are reasonable to assure the defendant's appearance and the safety of the victim and others. However, the bill proposes a rebuttable presumption, that no condition or combination of conditions will assure the defendant's appearance or the safety of the victim or others if (1) the defendant is charged with an unclassified felony, a class A felony, or a sexual felony;

(2) the person is charged with a felony, has a previous conviction for a felony, and less that five years have elapsed since his or her unconditional release for the prior conviction; (3) the offense was committed while the defendant was on release for another offense; (4) the charge is for a crime involving domestic violence, and the defendant has been convicted within the previous five years of a crime involving domestic violence; or (5) the defendant has been arrested in connection with a felony warrant from another state that alleges that the defendant is a fugitive from justice from that state.

Proposed **AS 12.30.016** adopts conditions that may be imposed in particular cases. These conditions are in addition to the general conditions authorized under AS 12.30.011(a) and (b). Most of these additional conditions are found in current law.

- Subsection (b) provides additional conditions that may be imposed on persons charged with Title 04 violations such as selling alcohol without a license or bootlegging, and with drunk driving and refusal to submit to a breath test. These conditions include, for example, a judicial officer ordering a person to submit to a breath test when requested to do so by a law enforcement officer.

- Subsection (c) provides additional conditions that may be imposed on a person charged with violation of the drug laws, and include, for example, prohibiting the person from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed.

- Subsection (d) is a provision that was enacted in 2006, that adopts a mandatory requirement of $250,000 cash bond for a person charged with manufacturing methamphetamine, unless the defendant proves to the court that his or her role was only as an aider or abettor and that the defendant did not stand to gain financially from the offense.

- Subsection (e) adopts specific conditions for a person charged with stalking that is not a crime involving domestic violence. The conditions are similar to those in current law.

- Subsection (f) adopts specific conditions that a court may impose on a person charged with a sex offense. The conditions are similar to current law, except that it adds a condition that the court may order the defendant to have no contact with person under 18 years of age, except for contact made during the normal course of business in a public place. It requires the court, as does current law, to assure that the victim has been notified of the

hearing or reasonable efforts to do so have been made, and to consider the victim's comments in making a release decision.

Section 5 adopts standards for the appointment of a third-party custodian for a person released before trial. It requires a court to obtain information about the proposed custodian including the person's ties to the community and his or her relationship with the defendant. It also sets minimum standards for custodians such as requiring the person to be physically able to perform the duties of custodian, and requires the person to agree to report immediately if the defendant has violated conditions. The bill also prohibits a person from acting as third-party custodian under certain circumstances, such as if the person may be called as a witness in the case, the person is on probation, or resides out of state.

Section 6 amends the statute addressing the general release conditions of a person charged with a crime involving domestic violence by conforming it to the language used in the newly adopted sections of the bill. It does not include a substantive change.

Section 7 amends the law that prohibits a court from allowing a person charged with a crime involving domestic violence from returning to the residence of the victim or to the residence of a person who has a protective order directed at the defendant. This prohibition was found to violate equal protection of the law in *Williams v. State*, 151 P.3d 460 (Alaska App. 2006). This section is in response to *Williams*, and would overturn it to the extent that it would prohibit a person from returning to the residence of the victim unless certain conditions were met. These include requiring that 20 days have elapsed since the arrest, the victim or petitioner consents to the return, the defendant does not have a prior conviction for a domestic violence crime against a person, and the defendant establish by clear and convincing evidence that return to the residence does not pose a danger to the victim or petitioner.

Section 8 rewrites the provision addressing appeal from conditions of release. Current law and the bill provide specific procedures for requesting the court to change conditions of release. The bill does not reenact the provision in current law that allows the court that imposed the conditions to hear at any time a motion to amend the release order. Rather, the bill requires the person to follow the procedures provided in the bill for asking the court to amend conditions.

The appeal procedure from the trial court's bail decision is similar in the bill to current law. The standard for review is the same as current law – the appellate court shall affirm the lower court unless it finds that the lower court abused its discretion. The bill allows the appellate court to modify the order, remand the case for further proceedings, or to direct the entry of an appropriate release order. This is also similar to current law.

Section 9 adds a new section addressing the temporary release of a person for an emergency such as the death of a family member. It is similar to current law under AS 12.30.010(a).

Section 10 addresses the release of persons who have been found guilty but not yet sentenced or whose conviction is being appealed. It allows release under the general provisions of AS 12.30, but it requires the person seeking release to establish by clear and convincing evidence that the release sought will reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

Under current law certain defendants may not be released after being found guilty, including a person convicted of an unclassified or class A felony. The current statute also prohibits release of persons convicted of class B or C felonies if they have a previous conviction for certain serious felonies. This later category was found by the court of appeals to violate the constitutional guarantee of equal protection of law. *Bourdon v. State*, 28 P. 3d 319 (Alaska App. 2001). The bill would prohibit release of a person found guilty of all sexual felonies, and a person found guilty of a class B felony who has been convicted of a felony in the prior 10 years. It avoids the problem in *Bourdon* by applying the prohibition to all persons convicted of class B felonies who have a conviction of a felony in the previous 10 years.

Section 11 makes clarifying changes to the law for the retention or release of a material witness who is not expected to respond to a subpoena to appear. The bill does not change the substance of current law to a great degree. It does, however, specify that the court may order a material witness who is not expected to respond to a subpoena to be arrested and released under the bail law. As does current law, it allows a material witness to be detained for enough time to take a deposition and then released, unless justice requires the person be personally present at trial.

Section 12 specifies that a person who is in custody in connection with a petition to revoke probation does not have a right to release under AS 12.30. This is the same as current law. *Burt v. State*, 823 P.2d 14 (Alaska App. 1991). However, a probationer may request release under AS 12.30. The bill provides that the probationer must establish by a preponderance of evidence that conditions on his or her release will reasonably assure the appearance of the probationer and the safety of the victim, other persons, and the community.

Section 13 is a conforming amendment to current law.

Section 14 provides that for purposes of the bail statutes, a conviction occurs at the time a person is found guilty, either by verdict of by plea.

Section 15 adds definitions to the bill.

Sections 16 – 18 are conforming amendments.

Section 19 provides that service of domestic violence protective orders on respondents need not by made by law enforcement officers if the respondent has already been served with the protective order on the record in court. It also specifies that when a judicial officer has denied a petition for a protective order, the order denying the petition need not be served on anyone.

Sections 20 and 21 amend Rule 5, Alaska Rules of Criminal Procedure. Current law requires a person who has been arrested to be brought before a judicial officer within 24 hours of being arrested. The bill changes this from 24 hours to 48 hours. Although the preferred procedure is to have persons arrested be brought as soon as possible before a judicial officer, the change in the deadline will give prosecutors and the police more time to gather information to provide the court in making a release decision, and allows more time to locate and inform the victim of the right to be present at release hearings.

Sections 22 and 23 are conforming amendments.

Section 24 amends Rule 41(c), Alaska Rules of Criminal Procedure, by providing that a court may not change or add to a bond requirement without the agreement of the surety.

Section 25 is a conforming amendment.

Section 26 amends Rule 603(b), Alaska Rules of Appellate Procedure, to clarify that release of a person whose conviction is being appealed may be allowed as provided by the provisions of AS 12.30.

Sections 27 – 29 include the repealers, the applicability sections, and the effective date provision.