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Martin  
3/26/18

**CS FOR SENATE BILL NO. 150(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to detaining a person for up to 48 hours for the prosecuting authority  
2 to demonstrate that release of the person would not reasonably ensure the appearance of  
3 the person or will pose a danger to the victim, other persons, or the community if the  
4 person has criminal history outside the state; relating to conditions of release for a  
5 person who is represented by an attorney or has a criminal history outside the state;  
6 relating to factors the court is required to consider when determining the conditions of  
7 release before trial; defining 'criminal history outside the state' for purposes of pretrial  
8 release; amending the authority of pretrial services officers to make a warrantless arrest  
9 or request the court to issue a warrant for arrest; providing that pretrial services,  
10 probation, and parole officers may perform duties relating to pretrial services,  
11 probation, and parole; amending Rule 41, Alaska Rules of Criminal Procedure; and  
12 providing for an effective date."

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

\* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that, if a person's criminal history outside the state is included in a pretrial risk assessment conducted under AS 33.07, the result of that assessment will control the release decision and the section of this bill allowing a defendant to be detained for 48 hours and directing presumptive release on a person's own recognizance or on an unsecured bond when the person has a criminal history outside the state will no longer apply.

\* **Sec. 2.** AS 12.30.006(b) is amended to read:

(b) At the first appearance before a judicial officer, a person may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011 would not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community, if the person has [BEEN CHARGED WITH THE FOLLOWING CRIMES:]

(1) **been charged with**

**(A)** an unclassified, class A, or class B felony;

**(B)** [(2)] a class C felony

**(i)** [(A)] under AS 11.41, AS 11.56.730, AS 28.35.030, or 28.35.032;

**(ii)** [(B)] that is a sex offense; in this **sub-subparagraph** [SUBPARAGRAPH], "sex offense" has the meaning given in AS 12.63.100; or

**(iii)** [(C)] that is a crime involving domestic violence; in this **sub-subparagraph** [SUBPARAGRAPH], "crime involving domestic violence" has the meaning given in AS 18.66.990; or

**(C)** [(3)] a class C felony, other than a class C felony listed in **(B)** [(2)] of this **paragraph** [SUBSECTION], and the person has been assessed as moderate to high risk under AS 12.30.011(c)(2); **or**

**(2) a criminal history outside the state that has not been used in determining the person's risk level in the pretrial risk assessment under**

**AS 33.07.**

\* **Sec. 3.** AS 12.30.011(a) is amended to read:

(a) **Except as otherwise provided in this chapter, a** [A] judicial officer may order that a person charged with an offense, in addition to other conditions imposed under this section, be released

(1) on the person's own recognizance;

(2) upon execution of an unsecured appearance bond; or

(3) upon execution of an unsecured performance bond.

\* **Sec. 4.** AS 12.30.011(b) is amended to read:

(b) A person charged with a misdemeanor that does not include an offense under AS 11.41, AS 11.56.730, 11.56.757, AS 28.35.030, or 28.35.032, a sex offense as defined in AS 12.63.100, or a crime involving domestic violence as defined in AS 18.66.990 and who is assessed by a pretrial services officer as

(1) low to moderate risk shall, **except as provided in (m) of this section,** be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond; or

(2) high risk shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release in combination with the release of the person on the person's own recognizance or upon execution of an unsecured bond can reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community.

\* **Sec. 5.** AS 12.30.011(c) is amended to read:

(c) A person charged with a class C felony that does not include an offense under AS 11.41, AS 11.56.730, AS 28.35.030, or 28.35.032, a sex offense as defined in AS 12.63.100, or a crime involving domestic violence as defined in AS 18.66.990 and who is assessed by a pretrial services officer as

(1) low risk shall, **except as provided in (m) of this section,** be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond; or

(2) moderate to high risk shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release in combination with the release of the person on the person's own recognizance or upon execution of an unsecured bond can reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community.

\* **Sec. 6.** AS 12.30.011(g) is amended to read:

(g) A person released under this **chapter** [SECTION] shall be released on the condition that the person

- (1) obey all court orders;
- (2) obey all laws;
- (3) make all court appearances;
- (4) maintain contact with the person's pretrial services officer, if one is appointed by the court, and follow the pretrial services officer's instructions;
- (5) maintain contact with the person's attorney **if the person is represented by an attorney;**
- (6) notify the person's attorney or, if the person is not represented by an attorney, the pretrial services officer or the court within 24 hours after a change in the person's residence.

\* **Sec. 7.** AS 12.30.011(i) is amended to read:

(i) 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, **including convictions outside the state;**
- (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 victim, and the danger that the person poses to the victim;

(11) the conditions of release recommended by the pretrial services officer;

(12) the person's pretrial risk assessment score; and

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

\* **Sec. 8.** AS 12.30.011 is amended by adding a new subsection to read:

(m) A person charged with an offense who would otherwise be released under AS 12.30.011(b)(1) or (c)(1) and who has a criminal history outside the state within the previous five years that has not been used in determining the person's risk level in the pretrial risk assessment under AS 33.07 shall be released on the person's own recognizance or upon execution of an unsecured appearance bond or unsecured performance bond unless the judicial officer finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release, in combination with the release of the person on the person's own recognizance or upon execution of an unsecured bond, can reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community.

\* **Sec. 9.** AS 12.30.080 is amended by adding a new paragraph to read:

(8) "criminal history outside the state" means a criminal history containing arrests, charges, or convictions not contained in the criminal justice information system developed and operated by the Department of Public Safety under AS 12.62.110.

\* **Sec. 10.** AS 33.07.030(g) is amended by to read:

(g) A pretrial services officer may

(1) recommend pretrial diversion to the court and parties before adjudication in accordance with the guidelines established by the commissioner under AS 33.07.020(6);

(2) [ARREST, WITHOUT A WARRANT, A DEFENDANT WHO HAS BEEN RELEASED WHILE AWAITING TRIAL] if the officer has probable cause to believe the defendant has committed an offense under AS 11.56.730 or 11.56.757 or has violated the defendant's release conditions, file a complaint with the court and

(A) arrest, with or without a warrant, a defendant who has been released while awaiting trial; or

(B) request the court to issue warrants related to any violation of the defendant's release conditions;

(3) refer interested defendants for substance abuse screening, assessment, and treatment on a voluntary basis and assist any defendant whose offense or criminal history identified a dependency on, abuse of, or addiction to alcohol or controlled substances with accessing and obtaining appropriate treatment in the community to address those needs;

(4) recommend that a defendant charged with an offense involving the use of alcohol or controlled substances comply with a program established under AS 47.38.020; and

(5) coordinate with community-based organizations and tribal courts and councils to develop and expand pretrial diversion options.

\* **Sec. 11.** AS 33.16.190 is amended to read:

**Sec. 33.16.190. Authority of parole, pretrial services, and probation officers.** An officer appointed by the commissioner under AS 33.05.020(a), AS 33.07, or under this chapter, may discharge duties under AS 33.05, AS 33.07, or this chapter.

\* **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 12.30.011 (a) - (c), (g), and (i), as amended by secs. 3 - 7 of this Act, and AS 12.30.011(m), enacted by sec. 8 of this Act, have the effect of changing Rule 41, Alaska Rules of Criminal Procedure, by changing the conditions of release for certain defendants.

\* **Sec. 13.** The uncoded law of the State of Alaska is amended by adding a new section to read:

1           APPLICABILITY. AS 12.30.006(b), as amended by sec. 2 of this Act, AS 12.30.011  
2 (a) - (c), (g), and (i), as amended by secs. 3 - 7 of this Act, and AS 12.30. 011(m), enacted by  
3 sec. 8 of this Act, apply to offenses committed on or after the effective date of secs. 2 - 8 of  
4 this Act.

5       \* **Sec. 14.** The uncoded law of the State of Alaska is amended by adding a new section to  
6 read:

7           CONDITIONAL EFFECT. Sections 3 - 8 of this Act take effect only if sec. 12 of this  
8 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
9 Constitution of the State of Alaska.

10       \* **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).