

**Selected SB 91-related Statutes
and
Court's Statewide Misdemeanor Bail Schedule**

**(for reference in Senate Judiciary Committee hearing,
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Violation of condition
of release
(VCR)

1 within 30 days after the person does not appear at the time and place of a
2 scheduled hearing; or

3 (B) does not appear at the time and place of a scheduled
4 hearing to avoid prosecution;

5 (2) class A misdemeanor if the person was released in connection with
6 a charge of a misdemeanor, while awaiting sentence or appeal after conviction of a
7 misdemeanor, or in connection with a requirement to appear as a material witness in a
8 criminal proceeding, and the person

9 (A) does not make contact with the court or a judicial officer
10 within 30 days after the person does not appear at the time and place of a
11 scheduled hearing; or

12 (B) does not appear at the time and place of a scheduled
13 hearing to avoid prosecution; or

14 (3) violation punishable by a fine of up to \$1,000.

15 (e) In a prosecution for failure to appear under (a) of this section, it is not a
16 defense that the defendant did not receive a reminder notification from a court or
17 judicial officer under Rule 38(e), Alaska Rules of Criminal Procedure.

18 * Sec. 29. AS 11.56.757(a) is amended to read:

19 (a) A person commits the offense [CRIME] of violation of condition of
20 release if the person

21 (1) has been charged with a crime or convicted of a crime;

22 (2) has been released under AS 12.30; and

23 (3) violates a condition of release imposed by a judicial officer under
24 AS 12.30, other than the requirement to appear as ordered by a judicial officer.

25 * Sec. 30. AS 11.56.757(b) is amended to read:

26 (b) Violation of condition of release is a violation punishable by a fine of up
27 to \$1,000 [(1) A CLASS A MISDEMEANOR IF THE PERSON IS RELEASED
28 FROM A CHARGE OR CONVICTION OF A FELONY;
29 (2) A CLASS B MISDEMEANOR IF THE PERSON IS RELEASED
30 FROM A CHARGE OR CONVICTION OF A MISDEMEANOR].

31 * Sec. 31. AS 11.56.759(a) is amended to read:

1 against the proposed custodian;

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

4 (5) there is a reasonable probability that the state will call the
5 proposed custodian [MAY BE CALLED] as a witness in the prosecution of the
6 person;

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

10 * Sec. 64. AS 12.30.055 is amended by adding a new subsection to read:

11 (b) A person who is in custody in connection with a petition to revoke
12 probation for a technical violation of probation under AS 12.55.110 shall be released
13 after the person has served the maximum number of days that the court could impose
14 on the person for a technical violation of probation under AS 12.55.110.

15 * Sec. 65. AS 12.55.011 is amended by adding a new subsection to read:

16 (b) At the time of sentencing, the court shall provide the victim with a form
17 that

18 (1) provides information on

19 (A) whom the victim should contact if the victim has questions
20 about the sentence or release of the offender;

21 (B) the potential for release of the offender on furlough,
22 probation, or parole or for good time credit; and

23 (2) allows the victim to update the victim's contact information with
24 the court, the Victim Information and Notification Everyday service, and the
25 Department of Corrections.

26 * Sec. 66. AS 12.55.025(a) is amended to read:

27 (a) When imposing a sentence for conviction of a felony offense or a sentence
28 of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a
29 regulation adopted under AS 04, or an ordinance adopted in conformity with
30 AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that
31 includes the following:

Suspended entry
of judgment
(SEJ)

community work in lieu of a fine is the state's minimum wage for each [\$3 PER]
hour.

* Sec. 76. AS 12.55.055 is amended by adding new subsections to read:

(g) The court may not

(1) offer a defendant convicted of an offense the option of serving jail
time in lieu of performing uncompleted community work previously ordered by the
court; or

(2) convert uncompleted community work hours into a sentence of
imprisonment.

(h) If a court orders community work as part of the defendant's sentence under
this section, the court shall provide notice to the defendant at sentencing and include
as a provision of the judgment that if the defendant fails to provide proof of
community work within 20 days after the date set by the court, the court shall convert
those community work hours to a fine equal to the number of uncompleted work hours
multiplied by the state's minimum hourly wage and issue a judgment against the
defendant for that amount.

* Sec. 77. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.078. Suspending entry of judgment. (a) Except as provided in (f)
of this section, if a person is found guilty or pleads guilty to a crime, the court may,
with the consent of the defendant and the prosecution and without imposing or
entering a judgment of guilt, defer further proceedings and place the person on
probation. The period of probation may not exceed the applicable terms set out in
AS 12.55.090(c).

(b) The court shall impose conditions of probation for a person on probation
as provided in (a) of this section, which may include that the person

- (1) abide by all local, state, and federal laws;
- (2) not leave the state without prior consent of the court;
- (3) pay restitution as ordered by the court; and
- (4) obey any other conditions of probation set by the court.

(c) At any time during the probationary term of the person released on
probation, a probation officer may, without warrant or other process, rearrest the

1 person so placed in the officer's care and bring the person before the court, or the court
2 may, in its discretion, issue a warrant for the rearrest of the person. The court may
3 revoke and terminate the probation if the court finds that the person placed on
4 probation is

5 (1) violating the conditions of probation;

6 (2) engaging in criminal practices; or

7 (3) violating an order of the court to participate in or comply with the
8 treatment plan of a rehabilitation program under AS 12.55.015(a)(10).

9 (d) If the court finds that the person has successfully completed probation, the
10 court shall, at the end of the probationary period set by the court, or at any time after
11 the expiration of one year from the date of the original probation, discharge the person
12 and dismiss the proceedings against the person.

13 (e) If the court finds that the person has violated the conditions of probation
14 ordered by the court, the court may revoke and terminate the person's probation, enter
15 judgment on the person's previous plea or finding of guilt, and pronounce sentence at
16 any time within the maximum probation period authorized by this section.

17 (f) The court may not suspend the imposition or entry of judgment and may
18 not defer prosecution under this section of a person who

19 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
20 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400,
21 AS 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135;

22 (2) uses a firearm in the commission of the offense for which the
23 person is convicted;

24 (3) has previously been granted a suspension of judgment under this
25 section or a similar statute in another jurisdiction, unless the court enters written
26 findings that by clear and convincing evidence the person's prospects for rehabilitation
27 are high and suspending judgment under this section adequately protects the victim of
28 the offense, if any, and the community;

29 (4) is convicted of a violation of AS 11.41.230, 11.41.250, or a felony
30 and the person has one or more prior convictions for a misdemeanor violation of
31 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction

1 having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a
 2 felony in this state; for the purposes of this paragraph, a person shall be considered to
 3 have a prior conviction even if

4 (A) the charges were dismissed under this section;

5 (B) the conviction has been set aside under AS 12.55.085; or

6 (C) the charge or conviction was dismissed or set aside under
 7 an equivalent provision of the laws of another jurisdiction; or

8 (5) has been convicted of a crime involving domestic violence, as
 9 defined in AS 18.66.990.

10 * Sec. 78. AS 12.55.090(b) is amended to read:

11 (b) Except as otherwise provided in (f) of this section, the court may revoke or
 12 modify any condition of probation, [OR MAY] change the period of probation, or
 13 terminate probation and discharge the defendant from probation.

14 * Sec. 79. AS 12.55.090(c) is amended to read:

15 (c) The period of probation, together with any extension, may not exceed

16 (1) 15 [25] years for a felony sex offense; [OR]

17 (2) 10 years for an unclassified felony under AS 11;

18 (3) five years for a felony offense not listed in (1) or (2) of this
 19 subsection;

20 (4) three years for a misdemeanor offense

21 (A) under AS 11.41;

22 (B) that is a crime involving domestic violence; or

23 (C) that is a sex offense, as that term is defined in
 24 AS 12.63.100;

25 (5) two years for a misdemeanor offense under AS 28.35.030 or
 26 28.35.032, if the person has previously been convicted of an offense under
 27 AS 28.35.030 or 28.35.032, or a similar law or ordinance of this or another
 28 jurisdiction; or

29 (6) one year for an offense not listed in (1) - (5) of this subsection
 30 [ANY OTHER OFFENSE].

31 * Sec. 80. AS 12.55.090(f) is amended to read:

Sec. 12.55.015. Authorized sentences; forfeiture.

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a fine when authorized by law and as provided in AS 12.55.035;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged;

(13) order the defendant to refrain from consuming alcoholic beverages for a period of time.

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* Sec. 90. AS 12.55.125(e) is amended to read:

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, probation, with a suspended term of imprisonment of zero to 18 months [TWO YEARS]; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 [, AND THE COURT MAY, AS A CONDITION OF PROBATION UNDER AS 12.55.086, REQUIRE THE DEFENDANT TO SERVE AN ACTIVE TERM OF IMPRISONMENT WITHIN THE RANGE SPECIFIED IN THIS PARAGRAPH];

(2) if the offense is a second felony conviction, one to three [TWO TO FOUR] years;

(3) if the offense is a third felony conviction, two [THREE] to five years;

(4) if the offense is a first felony conviction, and the defendant violated

(A) AS 08.54.720(a)(15), one to two years;

(B) AS 28.35.030(n)(1)(A) or 28.35.032(p)(1)(A), 120 days to

239 days;

(C) AS 28.35.030(n)(1)(B) or 28.35.032(p)(1)(B), 240 days to

359 days;

(D) AS 28.35.030(n)(1)(C) or 23.35.032(p)(1)(C), 360 days to

two years.

* Sec. 91. AS 12.55.135(a) is amended to read:

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than

(1) one year, if the

(A) conviction is for a crime with a mandatory minimum term of 30 days or more of active imprisonment;

Sec. 28.35.030. Operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.

(a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance, singly or in combination; or

(2) and if, as determined by a chemical test taken within four hours after the alleged operating or driving, there is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of blood, or if there is 0.08 grams or more of alcohol per 210 liters of the person's breath.

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of six months, and impose a fine of not less than \$1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 12 months, and impose a fine of not less than \$3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 18 months, and impose a fine of not less than \$4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 24 months, and impose a fine of not less than \$5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 30 months, and impose a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 36 months, and impose a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection;

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence; or

(C) suspend the requirement for an ignition interlock device for a violation of (a)(1) of this section involving an alcoholic beverage or intoxicating liquor, singly or in combination, or a violation of (a)(2) of this section;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law.

(c) *[Repealed, Sec. 34 ch 119 SLA 1990]*.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under this section shall supply the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress. Information compiled under this subsection is confidential and may only be used in connection with court proceedings involving the defendant's treatment, including use by a court in sentencing a person convicted under this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) *[Repealed, Sec. 34 ch 119 SLA 1990]*.

(g) Notwithstanding (b) of this section, the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

(h) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action program if such a program is available in the community where the person resides, or a private or public treatment facility approved by the Department of Health and Social Services, under AS 47.37 to make referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person is convicted under (n) of this section, the court shall order the person to be evaluated as required by this subsection before the court imposes sentence for the offense.

(i) A program of inpatient treatment may be required by the authorized agency under (h) of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(j) If a person fails to satisfy the requirements of an authorized agency under (i) of this section, the court

(1) may impose any portion of a suspended sentence; however, if the person was convicted under (n) of this section, the court shall impose a part or all of the remaining portion of any suspended sentence;

(2) may punish the failure as contempt of the authority of the court under AS 09.50.010 or as a violation of a condition of probation; and

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a driver's license until the requirements are satisfied.

(k) Imprisonment required under (b)(1)(A) of this section shall be served by electronic monitoring at a private residence under AS 33.30.065. If electronic monitoring is not available, imprisonment required under (b)(1)(A) of this section shall be served at a private residence by other means determined by the commissioner of corrections. A person who is serving a sentence of imprisonment required under (b)(1)(A) of this section by electronic monitoring at a private residence may not be subject to a search of the person's dwelling by a peace officer or a person required to administer the electronic monitoring under AS 33.30.065 (a), except upon probable

cause. Imprisonment required under (b)(1)(B) - (F) of this section may be served at a community residential center or at a private residence if approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring under AS 33.30.065 or, if electronic monitoring is not available, by other means as determined by the commissioner of corrections. The cost of imprisonment resulting from the sentence imposed under (b)(1) of this section shall be paid to the state by the person being sentenced. The cost of imprisonment required to be paid under this subsection may not exceed \$2,000. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. A person sentenced under (b)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

(l) The commissioner of corrections shall determine and prescribe by regulation a uniform average cost of imprisonment for the purpose of determining the cost of imprisonment required to be paid under (k) of this section by a convicted person. The regulations must include the costs associated with electronic monitoring under AS 33.30.065.

(m) If the act for which a person is convicted under this section contributes to a motor vehicle accident, the court shall order the person to pay the reasonable cost of any emergency services that responded to the accident, if the convicted person or the convicted person's insurer has not already paid the cost of the emergency services. If payment is required under this subsection, the payment shall be made directly to the emergency service and shall be equal to the actual cost of responding to the accident or the previous year's annual average cost of responding to a motor vehicle accident, whichever is higher. In this subsection, "emergency service" includes a peace officer, fire department, ambulance service, emergency medical technician, or emergency trauma technician.

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.032 (p) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of (u)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than \$10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of 60 months, and impose a minimum sentence of imprisonment of not less than

- (A) 120 days if the person has been previously convicted twice;
- (B) 240 days if the person has been previously convicted three times;
- (C) 360 days if the person has been previously convicted four or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection;

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence; or

(C) suspend the requirement for an ignition interlock device for a violation of (a)(1) of this section involving an alcoholic beverage or intoxicating liquor, singly or in combination, or a violation of (a)(2) of this section;

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

(4) may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(6) shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle or is registered as a co-owner under a business name, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and

(1) may restore the driver's license if

(A) the license has been revoked for a period of at least 10 years;

(B) the person has not been convicted of a driving-related criminal offense since the license was revoked; and

(C) the person provides proof of financial responsibility;

(2) shall restore the driver's license if

(A) the person has been granted limited license privileges under AS 28.15.201(g) and has successfully driven under that limited license for three years without having the limited license privileges revoked;

(B) the person has successfully completed a court-ordered treatment program under AS 28.35.028 or a rehabilitative treatment program under AS 28.15.201 (h);

(C) the person has not been convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction since the license was revoked;

(D) the person is otherwise eligible to have the person's driving privileges restored as provided in AS 28.15.211; in an application under this subsection, a person whose license was revoked for a violation of AS 28.35.030 (n) or 28.35.032(p) is not required to submit compliance as required under AS 28.35.030 (h) or 28.35.032(l); and

(E) the person provides proof of financial responsibility.

(p) *[Repealed, Sec. 7 ch 56 SLA 2006]*.

(q) For purposes of this section, the director of the division within the department responsible for administration of this section or a person designated by the director may request and receive criminal justice information available under AS 12.62. In this subsection, "criminal justice information" has the meaning given in AS 12.62.900.

(r) *[Repealed, Sec. 12 ch 85 SLA 2010]*.

(s) In a prosecution under (a) of this section, a person may introduce evidence on the amount of alcohol consumed before or after operating or driving the motor vehicle, aircraft, or watercraft to rebut or explain the results of a chemical test, but the consumption of alcohol before operating or driving may not be used as a defense that the chemical test did not measure the blood alcohol at the time of the operating or driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft, or watercraft may be used to raise such a defense.

(t) Notwithstanding (b) or (n) of this section, the court shall waive the requirement of the use of an ignition interlock device when a person operates a motor vehicle in a community included on the list published by the department under AS 28.22.011 (b).

(u) In this section,

(1) "inhalant" has the meaning given to the phrase "hazardous volatile material or substance" in AS 47.37.270;

(2) "operate an aircraft" means to navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(3) "operate a watercraft" means to navigate a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state;

(4) "previously convicted" means having been convicted in this or another jurisdiction within the 15 years preceding the date of the present offense of any of the following offenses; however, convictions for any of these offenses, if arising out of a single transaction and a single arrest, are considered one previous conviction:

(A) operating a motor vehicle, aircraft, or watercraft in violation of this section or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under (a)(2) of this section;

(B) refusal to submit to a chemical test in violation of AS 28.35.032 or in violation of another law or ordinance with similar elements; or

(C) operating a commercial motor vehicle in violation of AS 28.33.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AS 28.33.030 (a)(2).

1 * Sec. 90. AS 12.55.125(e) is amended to read:

2 (e) Except as provided in (i) of this section, a defendant convicted of a class C
3 felony may be sentenced to a definite term of imprisonment of not more than five
4 years, and shall be sentenced to a definite term within the following presumptive
5 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

6 (1) if the offense is a first felony conviction and does not involve
7 circumstances described in (4) of this subsection, probation, with a suspended term
8 of imprisonment of zero to 18 months [TWO YEARS]; a defendant sentenced under
9 this paragraph may, if the court finds it appropriate, be granted a suspended imposition
10 of sentence under AS 12.55.085 [, AND THE COURT MAY, AS A CONDITION OF
11 PROBATION UNDER AS 12.55.086, REQUIRE THE DEFENDANT TO SERVE
12 AN ACTIVE TERM OF IMPRISONMENT WITHIN THE RANGE SPECIFIED IN
13 THIS PARAGRAPH];

14 (2) if the offense is a second felony conviction, one to three [TWO
15 TO FOUR] years;

16 (3) if the offense is a third felony conviction, two [THREE] to five
17 years;

18 (4) if the offense is a first felony conviction, and the defendant violated

19 (A) AS 08.54.720(a)(15), one to two years;

20 (B) AS 28.35.030(n)(1)(A) or 28.35.032(p)(1)(A), 120 days to

21 239 days;

22 (C) AS 28.35.030(n)(1)(B) or 28.35.032(p)(1)(B), 240 days to

23 359 days;

24 (D) AS 28.35.030(n)(1)(C) or 23.35.032(p)(1)(C), 360 days to

25 two years.

26 * Sec. 91. AS 12.55.135(a) is amended to read:

27 (a) A defendant convicted of a class A misdemeanor may be sentenced to a
28 definite term of imprisonment of not more than

29 (1) one year, if the

30 (A) conviction is for a crime with a mandatory minimum
31 term of 30 days or more of active imprisonment;

1 (B) trier of fact finds the aggravating factor that the
2 conduct constituting the offense was among the most serious conduct
3 included in the definition of the offense;

4 (C) defendant has past criminal convictions for conduct
5 violative of criminal laws, punishable as felonies or misdemeanors, similar
6 in nature to the offense for which the defendant is being sentenced;

7 (D) conviction is for an assault in the fourth degree under
8 AS 11.41.230; or

9 (E) conviction is for a violation of

10 (i) AS 11.41.427;

11 (ii) AS 11.41.440;

12 (iii) AS 11.41.460, if the indecent exposure is before
13 a person under 16 years of age; or

14 (iv) AS 11.61.118(a)(2);

15 (2) 30 days.

16 * Sec. 92. AS 12.55.135(b) is amended to read:

17 (b) A defendant convicted of a class B misdemeanor may be sentenced to a
18 definite term of imprisonment of not more than

19 (1) 10 [90] days unless otherwise specified in the provision of law
20 defining the offense or in this section;

21 (2) 90 days if the conviction is for a violation of

22 (A) AS 11.61.116(c)(1) and the person is 21 years of age or
23 older; or

24 (B) AS 11.61.120(a)(6) and the person is 21 years of age or
25 older.

26 * Sec. 93. AS 12.55.135 is amended by adding new subsections to read:

27 (I) A court sentencing a person convicted of theft in the fourth degree under
28 AS 11.46.150, concealment of merchandise under AS 11.46.220(c)(3), removal of
29 identification marks under AS 11.46.260(b)(3), unlawful possession under
30 AS 11.46.270(b)(3), issuing a bad check under AS 11.46.280(d)(4), or criminal
31 simulation under AS 11.46.530(b)(3) may not impose

Driving with license
cancelled, suspended, revoked
(DWLS)

(E) include a monitoring program and physical placement or housing in communities where the court finds that a monitoring program and placement or housing is available;

(2) provide proof by clear and convincing evidence to the court that the person is currently sober and has maintained sobriety for a period of at least 18 months; and

(3) provide written notice to the district attorney's office of the person's request for a limited license under this section.

(i) A person is not entitled to court-appointed counsel under (h) of this section.

(j) The court or the department may immediately revoke a limited license granted under (g) of this section if the person is convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction or if the person is not in compliance with a court-ordered treatment program under AS 28.35.028 or a rehabilitative treatment program under (h) of this section.

* Sec. 104. AS 28.15.291(a) is repealed and reenacted to read:

(a) A person commits the crime of driving while license canceled, suspended, revoked, or in violation of a limitation if the person drives

(1) a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended, or revoked under circumstances described in AS 28.15.181(c) or a similar law in another jurisdiction;

(2) a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended, or revoked under circumstances other than those described in (1) of this subsection; or

(3) in violation of a limitation placed on that person's license or privilege to drive in this or another jurisdiction.

* Sec. 105. AS 28.15.291(b) is repealed and reenacted to read:

(b) Driving while license canceled, suspended, revoked, or in violation of a limitation is

(1) a class A misdemeanor if the person violates (a)(1) of this section;

1 upon conviction, the court shall impose a minimum sentence of imprisonment of not
2 less than 10 days

3 (A) with 10 days suspended if the person has not been
4 previously convicted under (a)(1) of this section or a similar law of another
5 jurisdiction; or

6 (B) if the person has been previously convicted under (a)(1) of
7 this section or a similar law in another jurisdiction;

8 (2) an infraction if the person violates (a)(2) or (3) of this section.

9 * Sec. 106. AS 28.35.028(b) is amended to read:

10 (b) Once the court elects to proceed under this section, the defendant shall
11 enter a no contest or guilty plea to the offense or shall admit to a probation violation,
12 as appropriate. The state and the defendant may enter into a plea agreement to
13 determine the offense or offenses to which the defendant is required to plead. If the
14 court accepts the agreement, the court shall enforce the terms of the agreement. The
15 court shall enter a judgment of conviction for the offense or offenses for which the
16 defendant has pleaded or an order finding that the defendant has violated probation, as
17 appropriate. A judgment of conviction or an order finding a probation violation must
18 set a schedule for payment of restitution owed by the defendant. In a judgment of
19 conviction and on probation conditions that the court considers appropriate, the court
20 may withhold pronouncement of a period of imprisonment or a fine to provide an
21 incentive for the defendant to complete recommended treatment successfully.
22 Imprisonment or a fine imposed by a court shall comply with AS 12.55 or any
23 mandatory minimum or other sentencing provision applicable to the offense.
24 However, notwithstanding Rule 35, Alaska Rules of Criminal Procedure, and any
25 other provision of law, the court, at any time after the period when a reduction of
26 sentence is normally available, may consider and reduce the defendant's sentence,
27 including imprisonment, fine, or license revocation, based on the defendant's
28 compliance with the treatment plan; when reducing a sentence, the court (1) may not
29 reduce the sentence below the mandatory minimum sentence for the offense unless the
30 court finds that the defendant has successfully complied with and completed the
31 treatment plan and that the treatment plan approximated the severity of the minimum

Driving without a
valid operating license

Sec. 28.15.011. Drivers must be licensed.

(a) A person may not be denied the privilege to drive a motor vehicle upon a highway in this state, except as prescribed by law.

(b) Every person exercising the person's privilege to drive, or exercising any degree of physical control of a motor vehicle upon a highway, vehicular way or area, or other public property in this state, is required to have in the possession of the person a valid Alaska driver's license issued under the provisions of this chapter for the type or class of vehicle driven, unless expressly exempted by law from this requirement.

(c) A person licensed under the provisions of this chapter may exercise in this state the privilege to drive a motor vehicle and is subject to the restrictions prescribed by this chapter. A municipality may not require a person to obtain any other driver's license to drive or operate a motor vehicle in this state.

Sec. 28.90.010. Penalties for violations of law, regulations, and municipal ordinances.

(a) It is a misdemeanor for a person to violate a provision of this title unless the violation is by this title or other law declared to be a felony or an infraction.

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by a fine of not more than \$500, or by imprisonment for not more than 90 days, or by both. In addition, the privilege to drive or the registration of vehicles may be suspended or revoked.

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed \$300.

(d) An infraction, as provided for in (c) of this section, is not considered a criminal offense and may not result in imprisonment, nor is a fine imposed for the commission of an infraction considered a penal or criminal punishment; nor may the commission of a single infraction result in the loss of a driver's license or privilege to drive in this state except as may result from the accumulation of points under AS 28.15.221 - 28.15.261, or the registration of vehicles; nor does a person cited with an infraction have a right to trial by jury or to court-appointed counsel.

(e) *[Repealed, Sec. 5 ch 85 SLA 1987].*

(g)(1) of this section shall be paid to the state by the person being sentenced. The [PROVIDED, HOWEVER, THAT THE] cost of imprisonment required to be paid under this subsection may not exceed \$2,000. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. [WHILE AT THE COMMUNITY RESIDENTIAL CENTER OR OTHER APPROPRIATE PLACE, A PERSON SENTENCED UNDER (g)(1)(A) OF THIS SECTION SHALL PERFORM AT LEAST 24 HOURS OF COMMUNITY SERVICE WORK.] A person sentenced under (g)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

* Sec. 111. AS 29.10.200(21) is amended to read:

(21) AS 29.25.070(e) and (g) (penalties) [(NOTICES OF CERTAIN CIVIL ACTIONS)];

* Sec. 112. AS 29.25.070(a) is amended to read:

(a) For the violation of an ordinance, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days, except as limited by (g) of this section. For a violation that cannot result in incarceration or the loss of a valuable license, a municipality may allow disposition of the violation without court appearance and establish a schedule of fine amounts for each offense.

* Sec. 113. AS 29.25.070 is amended by adding a new subsection to read:

(g) If a municipality prescribes a penalty for a violation of a municipal ordinance, including a violation under (a) of this section, and there is a comparable state offense under AS 11 or AS 28 with elements that are similar to the municipal ordinance, the municipality may not impose a greater punishment than that imposed for a violation of the state law. This subsection applies to home rule and general law municipalities.

* Sec. 114. AS 33.05.020 is amended by adding new subsections to read:

(g) The commissioner shall establish an administrative sanction and incentive program to facilitate a swift and effective response to a probationer's compliance with or violation of the conditions of probation. The commissioner shall adopt regulations to implement the program. At a minimum, the regulations must include

(1) a decision-making process to guide probation officers in determining the suitable response to positive and negative offender behavior that includes a list of sanctions for the most common types of negative behavior, including technical violations of conditions of probation, and a list of incentives for compliance with conditions and positive behavior that exceeds those conditions;

(2) policies and procedures that ensure

(A) a process for responding to negative behavior that includes a review of previous violations and sanctions;

(B) that enhanced sanctions for certain negative conduct are approved by the commissioner or the commissioner's designee; and

(C) that appropriate due process protections are included in the process, including notice of negative behavior, an opportunity to dispute the accusation and the sanction, and an opportunity to request a review of the accusation and the sanction.

(h) The commissioner shall establish by regulation a program allowing probationers to earn credits for complying with the conditions of probation. The credits earned reduce the period of probation. Nothing in this subsection prohibits the department from recommending to the court the early discharge of the probationer as provided in AS 33.30. At a minimum, the regulations must

(1) require that a probationer earn a credit of 30 days for each 30-day

1 probation or parole;

2 (2) is in the process of serving, or has successfully completed,
3 mandatory participation in a drug or alcohol treatment program;

4 (3) has taken action toward rehabilitation, including participation in a
5 drug or alcohol treatment program; or

6 (4) is successfully complying with the requirements of the person's
7 reentry plan.

8 * Sec. 170. AS 47.37.040 is amended to read:

9 **Sec. 47.37.040. Duties of department.** The department shall

10 (1) develop, encourage, and foster statewide, regional, and local plans
11 and programs for the prevention of alcoholism and drug abuse and treatment of
12 alcoholics, intoxicated persons, drug abusers, and inhalant abusers in cooperation with
13 public and private agencies, organizations, and individuals, and provide technical
14 assistance and consultation services for these purposes;

15 (2) coordinate the efforts and enlist the assistance of all public and
16 private agencies, organizations, and individuals interested in prevention of alcoholism,
17 drug abuse, and inhalant abuse, and treatment of alcoholics, intoxicated persons, drug
18 abusers, and inhalant abusers;

19 (3) cooperate with the Department of Corrections in establishing and
20 conducting programs to provide treatment for alcoholics, intoxicated persons, drug
21 abusers, and inhalant abusers in or on parole from penal institutions;

22 (4) cooperate with the Department of Education and Early
23 Development, school boards, schools, police departments, courts, and other public and
24 private agencies, organizations, and individuals in establishing programs for the
25 prevention of alcoholism, drug abuse, and inhalant abuse, and treatment of alcoholics,
26 intoxicated persons, drug abusers, and inhalant abusers, and preparing curriculum
27 materials for use at all levels of school education;

28 (5) prepare, publish, evaluate, and disseminate educational material
29 dealing with the nature and effects of alcohol and drugs, and the misuse of hazardous
30 volatile substances;

31 (6) develop and implement, as an integral part of treatment programs,

1 an educational program for use in the treatment of alcoholics, intoxicated persons,
2 drug abusers, and inhalant abusers that includes the dissemination of information
3 concerning the nature and effects of alcohol, drugs, and hazardous volatile substances;

4 (7) organize and foster training programs for all persons engaged in
5 treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers, and
6 establish standards for training paraprofessional alcoholism, drug abuse, and inhalant
7 abuse workers;

8 (8) sponsor and encourage research into the causes and nature of
9 alcoholism, drug abuse, and inhalant abuse, and the treatment of alcoholics,
10 intoxicated persons, drug abusers, and inhalant abusers, and serve as a clearinghouse
11 for information relating to alcoholism, drug abuse, and inhalant abuse;

12 (9) specify uniform methods for keeping statistical information by
13 public and private agencies, organizations, and individuals, and collect and make
14 available relevant statistical information, including number of persons treated,
15 frequency of admission and readmission, and frequency and duration of treatment;

16 (10) conduct program planning activities approved by the Advisory
17 Board on Alcoholism and Drug Abuse;

18 (11) review all state health, welfare, and treatment plans to be
19 submitted for federal funding, and advise the commissioner on provisions to be
20 included relating to alcoholics, intoxicated persons, drug abusers, and inhalant
21 abusers;

22 (12) assist in the development of, and cooperate with, alcohol, drug
23 abuse, and inhalant abuse education and treatment programs for employees of state
24 and local governments and businesses and industries in the state;

25 (13) use the support and assistance of interested persons in the
26 community, particularly recovered alcoholics, drug abusers, and inhalant abusers, to
27 encourage alcoholics, drug abusers, and inhalant abusers to voluntarily undergo
28 treatment;

29 (14) cooperate with the Department of Public Safety and the
30 Department of Transportation and Public Facilities in establishing and conducting
31 programs designed to deal with the problem of persons operating motor vehicles while

1 under the influence of an alcoholic beverage, inhalant, or controlled substance, and
2 develop and approve alcohol information courses required to be taken by drivers under
3 AS 28.15 or made available to drivers to reduce points assessed for violation of traffic
4 laws;

5 (15) encourage hospitals and other appropriate health facilities to
6 admit without discrimination alcoholics, intoxicated persons, drug abusers, and
7 inhalant abusers and to provide them with adequate and appropriate treatment;

8 (16) encourage all health insurance programs to include alcoholism
9 and drug abuse as a covered illness;

10 (17) prepare an annual report covering the activities of the department
11 and notify the legislature that the report is available;

12 (18) develop and implement a training program on alcoholism and
13 drug abuse for employees of state and municipal governments, and private institutions;

14 (19) develop curriculum materials on drug and alcohol abuse and the
15 misuse of hazardous volatile substances for use in grades kindergarten through 12, as
16 well as a course of instruction for teachers to be charged with presenting the
17 curriculum;

18 (20) develop and implement or designate, in cooperation with other
19 state or local agencies, a juvenile alcohol safety action program that provides alcohol
20 and substance abuse screening, referral, and monitoring of persons under 18 years of
21 age who have been referred to it by

22 (A) a court in connection with a charge or conviction of a
23 violation or misdemeanor related to the use of alcohol or a controlled
24 substance;

25 (B) the agency responsible for the administration of motor
26 vehicle laws in connection with a license action related to the use of alcohol or
27 a controlled substance; or

28 (C) department staff after a delinquency adjudication that is
29 related to the use of alcohol or a controlled substance;

30 (21) develop and implement, or designate, in cooperation with other
31 state or local agencies, an alcohol safety action program that provides [ALCOHOL

AND SUBSTANCE ABUSE SCREENING, REFERRAL, AND MONITORING] services to persons who have been referred by a court [IN CONNECTION WITH A CHARGE OR CONVICTION OF A MISDEMEANOR INVOLVING THE USE OF A MOTOR VEHICLE, AIRCRAFT, OR WATERCRAFT AND ALCOHOL OR A CONTROLLED SUBSTANCE, REFERRED BY A COURT] under AS 28.35.028, 28.35.030, or 28.35.032, or referred by an agency of the state with the responsibility for administering motor vehicle laws in connection with a driver's license action involving the use of alcohol or a controlled substance;

(22) whenever possible, apply evidence-based, research-based, and consensus-based substance abuse and co-occurring substance abuse and mental health disorders treatment practices and remove barriers that prevent the use of those practices;

(23) collaborate with first responders, hospitals, schools, primary care providers, developmental disability treatment providers, law enforcement, corrections, attorneys, the Alaska Court System, community behavioral treatment providers, Alaska Native organizations, and federally funded programs in implementing programs for co-occurring substance abuse and mental health disorders treatment.

* Sec. 171. AS 47.37.130(h) is amended to read:

(h) The department shall

(1) inspect, on a regular basis, approved public and private alcohol safety action programs at reasonable times and in a reasonable manner; [AND]

(2) maintain a list of approved public and private alcohol safety action programs; and

(3) develop regulations for the operation and management of alcohol safety action programs that ensure

(A) screenings are conducted using a validated risk tool;

and

(B) monitoring of participants is appropriate to the risk of reoffense of the participant as determined by the screening.

* Sec. 172. AS 47.37.130 is amended by adding a new subsection to read:

(k) The public and private alcohol safety action programs established under

minor consuming/
possessing alcohol

Sec. 04.16.050. Possession, control, or consumption by persons under 21 years of age.

(a) A person under 21 years of age may not knowingly consume, possess, or control alcoholic beverages except those furnished to persons under AS 04.16.051 (b).

(b) A person under 21 years of age who knowingly consumes, possesses, or controls an alcoholic beverage other than an alcoholic beverage furnished under AS 04.16.051 (b) commits the offense of minor consuming or in possession or control.

(c) Minor consuming or in possession or control is a violation, punishable by a fine of \$500. The violation must be charged and filed with the court as a separate case and may not be combined or joined with any other minor offense or criminal charge in one action at the time of filing. A court may reduce the fine to \$50 for a person who has not more than one previous violation or to \$250 for a person who has two or more previous violations if the person provides the court, not later than six months after a judgment of conviction is entered, with proof of completion of

(1) an alcohol safety action program or a juvenile alcohol safety action program developed, designated, or approved by the Department of Health and Social Services under AS 47.37; or

(2) a community diversion panel.

(effective October 2016)

IN THE TRIAL COURT FOR THE STATE OF ALASKA

In the Matter of:)
)
BAIL SCHEDULE)

)

PRESIDING JUDGE ADMINISTRATIVE ORDER
ESTABLISHING A STATEWIDE BAIL SCHEDULE

August 1, 2016¹

1. **Scope of Application.** The Bail Schedule attached to this Administrative Order is issued pursuant to Alaska Criminal Rule 41(d) and Alaska Administrative Rule 46, and is promulgated for use throughout all judicial districts of the State of Alaska.

2. **Felony.** The Bail Schedule does not apply to felonies, including a Petition to Revoke Probation, *see* Criminal Rule 41(e).

3. **Domestic Violence.** A defendant charged with a crime involving domestic violence as defined in AS 18.66.990(3) shall be held without bail per AS 12.30.027(e) until the defendant appears before a judicial officer within the time period set by applicable law.

4. **Arrest and Bench Warrants.** If a defendant is arrested pursuant to an arrest or bench warrant, the then monetary bail and conditions, if any, set in the warrant shall control.

¹ This Order replaces the Orders issued in March and on 12 July 2016.

5. **Misdemeanor, Bail to Be Set by a Judicial Officer.** A defendant charged with the following offenses or conduct shall be brought before a judicial officer for bail to be set or reviewed

- (a) a second or additional DUI or Refusal,
- (b) a second or additional non-DV assault if the most recent assault was within five years,
- (c) violation of a condition of release set in a case alleging a crime involving domestic violence, or
- (d) Unlawful Evasion or Escape.

6. **Misdemeanor, Release on Own Recognizance and Conditions.** All other defendants arrested without a warrant, shall be released on his or her Own Recognizance subject to the following conditions:

- (a) obey all court orders and all federal, state, and local laws;
- (b) appear in court when ordered;
- (c) if represented, maintain contact with the person's lawyer and notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence;
- (d) if unrepresented, notify the prosecuting authority and the court, not more than 24 hours after the person changes residence;
- (e) do not leave Alaska; and
- (f) do not contact, directly or indirectly, any alleged victim.

7. **Officer Request for Monetary Bail or Additional Condition.** The arresting officer may apply to a judicial officer for a different bail. If the defendant is

]

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charged with new charge of Violating Conditions of Release or Failure to Appear, then the bail on that charge is OR.]

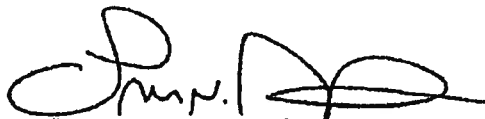
8. **Defendant under the Influence of Alcohol.** If the officer has reasonable suspicion that the defendant, at the time of arrest, was under the influence of alcohol, then there is a condition of release that the defendant not possess or consume alcohol.

9. **First Appearance.** The judicial officer presiding at the defendant's first court appearance may adjust bail and conditions of release even if the Bail Schedule applies. The setting of bail cannot be delegated to correctional officers, police officers, or any other person.

10. **Arraignment Date.** Upon release pursuant to the Bail Schedule, the defendant's next court appearance shall be the date set for arraignment at the first available time during the next business day or as provided by the local court.

IT IS SO ORDERED.

Dated at Ketchikan, Alaska this 29th day of ^{July}~~August~~, 2016.



Trevor N. Stephens
Presiding Judge First Judicial District

Dated at Kotzebue, Alaska this 1st day of August, 2016.




Paul A. Roctman
Presiding Judge Second Judicial District

Dated at Anchorage, Alaska this 1st day of August, 2016.



William F. Morse
Presiding Judge Third Judicial District

Dated at Fairbanks, Alaska this 1st day of August, 2016.



Michael A. MacDonald
Presiding Judge Fourth Judicial District

Distribution: The Clerks of Court are to distribute to all Police, Correctional Facilities, Jails, District Attorney Offices, Public Defender Agencies, and Municipal Attorney Offices in their communities; all Judges and Magistrates in their court; all Cities and Boroughs in their area; Chief Justice Stowers; Court Administrator Christine Johnson; and all area court administrators.

User Notes

1. **PJAO ¶ 3.** AS 12.30.027(e) provides, “A person arrested for a crime involving domestic violence or for violation of a condition of release in connection with a crime involving domestic violence may not be released from custody until the person has appeared in person *before a judicial officer or telephonically for arraignment.*” (Italics added.) The presiding judges construe this statute to mean that a person arrested for domestic violence cannot be released pursuant to a bail schedule. Instead, the arrestee must appear before a judicial officer, whether in person or by telephone, at a hearing that is functionally an arraignment on the new charge. For a proceeding to be an arraignment the prosecutor must be present, in person or by telephone. (Added 12 July 2016).
2. **PJAO ¶ 5.** Sections 26 and 28 of SB 91, signed by Governor Walker on 11 July 2016, reduce the former crime of failure to appear (FTA) to a violation, punishable by a fine only, unless certain conditions are met. Therefore, the bail for a FTA violation is set by the schedule to be OR with conditions. Paragraph 5 of the PJA Order has been modified to remove FTA violation from crimes listed for which an arrestee must be brought before a judicial officer so that bail may be set. (Added 12 July 2016).
3. **PJAO ¶ 5.** Section 28 of SB 91 redefines a FTA as a misdemeanor or felony if the underlying crime is a misdemeanor or felony, respectively, and the defendant either does not make contact with “the court or a judicial officer” within 30 days of a hearing or fails to appear “to avoid prosecution.” The presiding judges assume that most FTA violations will only become a FTA crime in two scenarios: (a) as the result of a prosecutor filing a new charge and requesting an arrest warrant or (b) a person being arrested on or charged with a FTA violation, after which the prosecutor increases the charge to a FTA crime. For scenario (a) the bail set by the judicial officer who issued the

arrest warrant will govern. PJA Order ¶ 4. For scenario (b) the prosecutor may seek to have bail modified at an arraignment on the new charge or a bail hearing. (Added 12 July 2016).

4. **PJAO ¶ 5.** Sections 29 and 30 of SB 91, signed by Governor Walker on 11 July 2016, reduce the former crime of violation of condition of release (VCOR) to a violation, punishable by a fine only. Therefore, the bail for such an offense is set by the schedule to be OR and conditions. It should be noted that police may still arrest a person for violating the conditions of release. AS 12.25.030(b)(3)(C). Paragraph 5 of the PJA Order has been modified to remove VCOR from offenses listed for which a charged arrestee must be brought before a judicial officer so that bail may be set. However, paragraph 5(c) has been revised to include arrests for violating conditions of release set in an existing charge of domestic violence. *See* user note 5. (Added 12 July 2016).

5. **PJAO ¶ 5.** AS 12.30.027(e) provides, “A person arrested for a crime involving domestic violence or *for violation of a condition of release in connection with a crime involving domestic violence* may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.” (Italics added.) The presiding judges construe the retention of the italicized language, despite SB 91’s reduction of the offense of Violating Conditions of Release from a crime to a violation, to mean that police may arrest a person for allegedly violating a condition of release, even though they may elect not to charge the person with a new offense (that of VCOR, a violation). When police arrest a person, who has been released on bail for a crime of domestic violence, for violating the conditions of release, that person cannot be released from custody until brought before a judicial officer for arraignment. (Added 12 July 2016).

6. PJA O ¶ 7. The presiding judges appreciated that there would be situations when an arrestee was particularly dangerous, in part because of alcohol, or vulnerable because of intoxication (albeit intoxication less extreme than that which would warrant commitment pursuant to AS 47.37.180). If a police officer believes that special circumstances exist in a particular arrest that warrant something other than an OR release or the imposition of additional conditions of release (including conditions that address intoxication) then the police officer may contact a judicial officer to request a bail package that deviates from the bail schedule. (Added 12 July 2016).

7. PJA O ¶ 7. [Deleted] (1 August 2016).

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 bond, on the condition that the person

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

(2) appear in court when ordered;

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

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

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

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

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

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

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

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

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

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

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

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

(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;

(18) require the person to comply with a program established under AS 47.38.020 if the person has been charged with an alcohol-related or substance-abuse-related offense that is an unclassified felony, a class A felony, a sexual felony, or a crime involving domestic violence.

(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 victim, and the danger that the person poses to the victim;
 - (11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.
- (d) In making a finding regarding the release of a person under this chapter,
- (1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;
 - (2) there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is
 - (A) charged with an unclassified felony, a class A felony, a sexual felony, or a felony under AS 28.35.030 or 28.35.032;
 - (B) charged with a felony crime against a person under AS 11.41, was previously convicted of a felony crime against a person under AS 11.41 in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;
 - (C) charged with a felony offense committed while the person was on release under this chapter for a charge or conviction of another offense;
 - (D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;
 - (E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.