

CS FOR HOUSE BILL NO. 368(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/6/00

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to release of persons before trial and before sentencing or
2 service of sentence; relating to when service of sentence shall begin; relating to
3 custodians of persons released, to security posted on behalf of persons released,
4 and to the offense of violation of conditions of release; and amending Rule 41(f),
5 Alaska Rules of Criminal Procedure."

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

7 * **Section 1.** AS 09.50.010 is amended to read:

8 **Sec. 09.50.010. Acts or omissions constituting contempt.** The following acts
9 or omissions with [IN] respect to a court of justice or court proceedings are contempts
10 of the authority of the court:

11 (1) disorderly, contemptuous, or insolent behavior toward the judge
12 while holding the court, tending to impair its authority or to interrupt the course of a
13 trial or other judicial proceeding;

1 (2) a breach of the peace, boisterous conduct, or violent disturbance,
2 tending to interrupt the course of a trial or other judicial proceeding;

3 (3) misbehavior in office, or other wilful neglect or violation of duty
4 by an attorney, clerk, peace officer, or other person appointed or elected to perform
5 a judicial or ministerial service;

6 (4) deceit or abuse of the process or proceedings of the court by a party
7 to an action or **proceeding** [PROCEEDINGS];

8 (5) disobedience of a lawful judgment, order, or process of the court;

9 (6) falsely pretending to act under authority to an order or process of
10 the court;

11 (7) rescuing a person or property in the custody of an officer by virtue
12 of an order or process of the court;

13 (8) unlawfully detaining a witness or party to an action or proceeding
14 while going to, remaining at, or returning from the court where the witness or party
15 is for trial;

16 (9) any other unlawful interference with the process or proceedings of
17 the court;

18 (10) disobedience of a subpoena duly served, or refusing to be sworn
19 or answer as a witness;

20 (11) when summoned as a juror in a court, neglecting to attend or
21 serve, or improperly conversing with a party to an action or proceeding to be tried at
22 the court or with another person in relation to the merits of the action, or receiving a
23 communication from a party or other person in respect to it without immediately
24 disclosing it to the court;

25 (12) disobedience by an inferior court, judge, magistrate, referee,
26 master, or officer of the lawful judgment, order, or process of a higher court, or
27 proceeding in an action or proceeding contrary to law after the action or proceeding
28 is removed from the jurisdiction of that inferior court, judge, magistrate, or officer;

29 **(13) failure, when acting as a custodian appointed by the court for**
30 **a released person under AS 12.30, to report immediately that the person released**
31 **has violated a condition of release.**

1 * **Sec. 2.** AS 09.50.020(a) is amended to read:

2 (a) A person who is guilty of contempt is punishable by fine of not more than
3 \$300 or by imprisonment for not more than six months. However, when the contempt
4 is one mentioned in AS 09.50.010(3) - (12), or in an action before a magistrate, the
5 person is punishable by a fine of not more than \$100 unless it appears that a right or
6 remedy of a party to an action or proceeding was defeated or prejudiced by the
7 contempt, in which case the penalty shall be as prescribed for contempts described in
8 AS 09.50.010(1), [AND] (2), **and (13)**.

9 * **Sec. 3.** AS 11.56 is amended by adding a new section to read:

10 **Sec. 11.56.757. Violation of condition of release.** (a) A person commits the
11 crime of violation of condition of release if the person

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

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

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

16 (b) Violation of condition of release is

17 (1) a class A misdemeanor if the person is released from a charge or
18 conviction of a felony;

19 (2) a class B misdemeanor if the person is released from a charge or
20 conviction of a misdemeanor.

21 (c) In this section, "conviction" means that an adult, or a juvenile charged as
22 an adult under AS 47.12, has entered a plea of guilty, guilty but mentally ill, or nolo
23 contendere, or has been found guilty or guilty but mentally ill by a court or jury.

24 * **Sec. 4.** AS 12.30.020(b) is amended to read:

25 (b) If a judicial officer determines under (a) of this section that the release of
26 a person will not reasonably assure the appearance of the person, or will pose a danger
27 to the alleged victim, other persons, or the community, the judicial officer may

28 (1) place the person in the custody of a designated person or
29 organization agreeing **as a custodian** to supervise the person; **the court shall,**
30 **personally and in writing, inform the custodian about the duties required of a**
31 **custodian, and that failure to report immediately in accordance with the terms of**

1 **the order that the person released has violated a condition of release may result**
 2 **in the custodian's being held in contempt under AS 09.50.010;**

3 (2) place restrictions on the travel, association, or place of abode of the
 4 person during the period of release;

5 (3) require the person to return to custody after daylight hours on
 6 designated conditions;

7 (4) require the execution of an appearance bond in a specified amount
 8 and the deposit in the registry of the court, in cash or other security, a sum not to
 9 exceed 10 percent of the amount of the bond; the deposit to be returned upon the
 10 performance of the condition of release;

11 (5) require the execution of a bail bond with sufficient solvent sureties
 12 or the deposit of cash; [OR]

13 (6) **require the execution of a performance bond in a specified**
 14 **amount and the deposit in the registry of the court, in cash or other security; the**
 15 **deposit to be returned upon the performance of the condition of release; or**

16 (7) impose any other condition considered reasonably necessary to
 17 assure the defendant's appearance as required and the safety of the alleged victim,
 18 other persons, or the community.

19 * **Sec. 5.** AS 12.30.060 is amended to read:

20 **Sec. 12.30.060. Penalties for failure to appear.** A person released under the
 21 provisions of this chapter who **knowingly** [WILFULLY] fails to appear before a court
 22 or judicial officer as required shall incur a forfeiture of any security that was given or
 23 pledged for the person's release, **as provided in AS 12.30.065,** and, if the person was
 24 released

25 (1) in connection with a charge of felony, or while awaiting sentence
 26 or pending appeal after conviction of an offense, is guilty of a felony and upon
 27 conviction is punishable by a fine of not more than \$5,000 or by imprisonment for not
 28 more than five years, or by both;

29 (2) in connection with a charge of misdemeanor, is guilty of a
 30 misdemeanor and upon conviction is punishable by a fine of not more than the
 31 maximum provided for the misdemeanor, or by imprisonment for not more than one

1 year, or by both; or

2 (3) for appearance as a material witness, is guilty of a misdemeanor
3 and upon conviction is punishable by a fine of not more than \$1,000, or by
4 imprisonment for not more than one year, or by both.

5 * **Sec. 6.** AS 12.30 is amended by adding a new section to read:

6 **Sec. 12.30.065. Forfeiture of security.** (a) The court shall forfeit any
7 security given or pledged for the release of a person under this chapter if the person
8 violates a condition of release that prohibits the person from knowingly or intentionally
9 contacting, either directly or indirectly, a victim or witness in the proceeding.

10 (b) The court may order the forfeiture of all or a portion of any security given
11 or pledged for the release of a person under this chapter if the person fails to appear
12 before a court or judicial officer as required in an order by a court or judicial officer
13 or violates a condition of release other than one described in (a) of this section.

14 (c) If the court orders a forfeiture under this section, the court shall issue a
15 judgment for the amount forfeited. Proceedings to enforce the judgment may be
16 instituted by the prosecuting authority. Execution shall issue on judgments of
17 forfeiture entered under this subsection in the same manner as on other judgments for
18 the payment of money.

19 * **Sec. 7.** AS 12.55.025(c) is amended to read:

20 (c) Except as provided in (d) and (e) of this section, when a defendant is
21 sentenced to imprisonment, the term of confinement commences on the date of
22 imposition of sentence **unless the court specifically provides that the defendant**
23 **must report to serve the sentence on another date. If the court provides another**
24 **date to begin the term of confinement, the court shall provide the defendant with**
25 **written notice of the date, time, and location of the correctional facility to which**
26 **the defendant must report.** A defendant shall receive credit for time spent in custody
27 pending trial, sentencing, or appeal, if the detention was in connection with the offense
28 for which sentence was imposed. A defendant may not receive credit for more than
29 the actual time spent in custody pending trial, sentencing, or appeal. The time during
30 which a defendant is voluntarily absent from official detention after the defendant has
31 been sentenced may not be credited toward service of the sentence.

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

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

5 (f) **Forfeiture.**

6 (1) Judgment of Forfeiture. If the person released on bail on the giving
7 or pledging of security fails to appear before a court or a judicial officer as required,
8 **or violates a condition of release prohibiting the person knowingly or intentionally**
9 **from contacting a victim or witness,** the judge or magistrate before whom the person
10 released was to appear shall **provide for forfeiture of** [FORFEIT] the security **as**
11 **provided in AS 12.30.065.** The clerk may sign the judgment of forfeiture if directed
12 to do so on the record in the particular proceeding by the judge. However, the
13 judgment of forfeiture may not be enforced until a hearing is held pursuant to
14 subparagraph **(f)(3) of this rule** [(d)(3)] or, if no hearing is requested, until 30 days
15 after the date of notice of the judgment of forfeiture. Nothing in this subparagraph
16 shall interfere with the issuance of a summons or bench warrant for a person who fails
17 to appear as required before a court or judicial officer.

18 (2) Notice of Forfeiture. The clerk shall send notice of the judgment
19 of forfeiture to the defendant, defendant's attorney and the person pledging the security
20 at their last known addresses. The notice must state that a hearing will be held on the
21 forfeiture if timely requested pursuant to subparagraph **(f)(3) of this rule** [(d)(3)].

22 (3) Hearing. If requested by the defendant or person giving or pledging
23 the security within 30 days of the date of notice of the forfeiture, the court shall hold
24 a hearing [TO DETERMINE WHETHER THE DEFENDANT'S FAILURE TO
25 APPEAR WAS WILLFUL]. The state, the defendant, the defense attorney, and the
26 person giving or pledging the security have the right to be heard at this hearing. The
27 court shall set aside the judgment of forfeiture if it is proven by a preponderance of
28 the evidence that the **(A) failure to appear or failure to comply with a condition**
29 **other than one described in AS 12.65.065(a) was due to circumstances beyond the**
30 **control of the defendant; or (B) defendant's contact with a victim or witness did**
31 **not occur or was not done knowingly or intentionally** [WAS NOT WILLFUL]. The

1 court may set aside the judgment of forfeiture if the court concludes that justice does
 2 not require the enforcement of the judgment. An appeal may be taken from the
 3 judgment of forfeiture in the manner of other appeals.

4 (4) Remission. Within one year after entry of judgment of forfeiture,
 5 a person who has given or pledged security may apply to the court for a remission,
 6 either in whole or in part, based on the return of the defendant with the assistance of
 7 the person who gave or pledged security or upon such other extraordinary
 8 circumstances as justice requires. The conditions of remission may include payment
 9 of expenses incurred for enforcement of the forfeiture and for securing the return of
 10 the defendant to custody.

11 (5) Exoneration. When the conditions of the bond have [HAS] been
 12 satisfied or the forfeiture thereof has been remitted, the court shall exonerate the
 13 obligors and release any bail. A surety may be exonerated by a deposit of cash in the
 14 amount of the bond or by a timely surrender of the defendant into custody.

15 (6) Enforcement. Execution shall issue on judgments of forfeiture in
 16 the same manner as on other judgments for the payment of money.

17 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section
 18 to read:

19 **CONDITIONAL EFFECT.** Sections 5, 6, and 8 of this Act take effect only if sec. 8
 20 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
 21 Constitution of the State of Alaska.

22 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section
 23 to read:

24 **APPLICABILITY.** (a) Sections 1 - 3, 5, and 6 of this Act apply to offenses
 25 committed on or after the effective date of this Act. However, the underlying offense for
 26 which a person is on release before trial, sentence, or service of sentence may occur before,
 27 on, or after the effective date of this Act.

28 (b) Section 4 of this Act applies to custodians appointed and performance bonds
 29 posted on or after the effective date of this Act. However, offenses that give rise to the
 30 appointment of a custodian or the posting of the performance bond may occur before, on, or
 31 after the effective date of this Act.

1 (c) Sections 6 and 8 of this Act apply to acts that require or allow forfeiture of
2 security that occur on or after the effective date of this Act. However, offenses that give rise
3 to the giving or pledging of security may occur before, on, or after the effective date of this
4 Act.

5 (d) Section 7 of this Act applies to actions occurring before, on, or after the effective
6 date of this Act.