

CS FOR HOUSE BILL NO. 324(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/13/10

Referred: Today's Calendar

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 violation of AS 11.56.740; or

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

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

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

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

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

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

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

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

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

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

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

12 (2) the prosecuting authority and any surety, if applicable, have at least
 13 48 hours' written notice before the time set for the review requested under this
 14 subsection; the defendant shall notify the surety; and

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

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

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

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

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

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

1 bond, on the condition that the person

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

3 (2) appear in court when ordered;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (6) the person's record of convictions;

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

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

29 release;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) to refrain from

4 (A) consuming alcohol beverages; or

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

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

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

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

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

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

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

23 (1) to refrain from

24 (A) consuming a controlled substance; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 condition of release; and

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

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

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

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

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

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

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

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

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

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

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

2 (b) A **judicial officer** [COURT] may not order or permit a person released
3 under (a) of this section to return to the residence **or place of employment** of the
4 [ALLEGED] victim or the residence **or place of employment** of a petitioner who has
5 a protective order directed to the person and issued or filed under AS 18.66.100 -
6 18.66.180 **unless**

7 **(1) 20 days have elapsed following the date the person was**
8 **arrested;**

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

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

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

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

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

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

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

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

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

31 (2) the release is requested because of the

- 1 (A) death of an immediate family member of the person;
- 2 (B) birth of the person's child if the defendant executes an
3 affidavit of paternity before the release;
- 4 (C) person's need for a mental health or substance abuse
5 assessment that the court finds cannot be accommodated in the facility or
6 telephonically; or
- 7 (D) person's need for a medical or dental examination required
8 for acceptance into a residential treatment facility; and
- 9 (3) the court solicits information from the Department of Corrections
10 regarding the defendant's conduct while incarcerated and considers that information
11 when making a decision under this subsection.

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

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

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

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

- 25 (1) an unclassified or class A felony;
- 26 (2) a sexual felony;
- 27 (3) a class B felony if the person has been convicted within the
28 previous 10 years of a felony committed in this state or a similar offense committed in
29 another jurisdiction; or
- 30 (4) a felony in violation of AS 11.41, and the person has been found
31 guilty but mentally ill.

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

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

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

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

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

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

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

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

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

1 person [DEFENDANT] is convicted.

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

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

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

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

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

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

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

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

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

13 (12) the defendant was on release under AS 12.30 [AS 12.30.020 OR
14 12.30.040] for another felony charge or conviction or for a misdemeanor charge or
15 conviction having assault as a necessary element;

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

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

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

21 (B) under AS 12.25.180;

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

23 (D) under AS 12.70.

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

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

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

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

1 AS 11.56.740;

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

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

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

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

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

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

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

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

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

3 (2) If

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) the execution of an appearance bond in a specified amount and the
4 deposit in the registry of the court, in cash [or other security], of a sum not to exceed
5 10 percent of the amount of the bond;

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

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

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

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

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

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

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

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

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

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

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

1 (b) **Release Pending Appeal.** When an appeal on the merits is pending, an
2 appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending
3 appeal or imposing conditions of release pending appeal shall be in the form of a
4 motion filed in the merit appeal. The motion must be filed with the clerk of the
5 appellate courts within 30 days after the date of the notice of the order from which
6 review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule
7 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual
8 information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited
9 to the following:

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

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

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

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

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

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

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

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

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

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

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

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

19 * **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and
 20 12.30.060 are repealed.

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

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

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

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

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

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

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

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

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

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

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