

SENATE CS FOR CS FOR HOUSE BILL NO. 324(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/16/10

Referred: Rules

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 sentencing restrictions concerning alcoholic beverages;
6 relating to service of process for domestic violence protective orders; making
7 conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal
8 Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing
9 for an effective date."

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

11 * **Section 1.** AS 04.16.160(a) is amended to read:

12 (a) Except as otherwise provided by law, a person who is 21 years of age or

1 older may not purchase alcoholic beverages if the person has been ordered to refrain
 2 from consuming alcoholic beverages under AS 12.55.015(a)(13) or as part of a
 3 sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar
 4 municipal ordinance or as a condition of probation or parole from a conviction under
 5 AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on
 6 purchasing alcoholic beverages applies during the period that the person is required to
 7 refrain from consuming alcoholic beverages under the sentence or condition of
 8 probation or parole.

9 * **Sec. 2.** AS 11.56 is amended by adding a new section to read:

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

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

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

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

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

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

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

27 (2) class A misdemeanor if the person was released in connection with
 28 a

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

31 (B) requirement to appear as a material witness in a criminal

1 proceeding.

2 * **Sec. 3.** AS 12.25.030(b) is amended to read:

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

4 (1) shall make an arrest under the circumstances described in
5 AS 18.65.530;

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

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

11 (B) committed the crime of violating a protective order in
12 violation of AS 11.56.740; or

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

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

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

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

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

29 * **Sec. 4.** AS 12.30 is amended by adding a new section to read:

30 **Sec. 12.30.006. Release procedures.** (a) At the first appearance before a
31 judicial officer, a person charged with an offense shall be released or detained under

1 the provisions of this chapter.

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

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

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

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

23 (2) the prosecuting authority and any surety, if applicable, have at least
24 48 hours' written notice before the time set for the review requested under this
25 subsection; the defendant shall notify the surety; and

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

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

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

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

8 * **Sec. 5.** AS 12.30 is amended by adding new sections to read:

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

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

14 (2) appear in court when ordered;

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

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

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

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

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

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

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

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

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

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

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

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

11 (10) require the person to refrain from the use of a controlled substance
12 as defined by AS 11.71, unless prescribed by a licensed health care provider with
13 prescriptive authority;

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

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

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

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

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

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

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

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

- 1 (1) the nature and circumstances of the offense charged;
 2 (2) the weight of the evidence against the person;
 3 (3) the nature and extent of the person's family ties and relationships;
 4 (4) the person's employment status and history;
 5 (5) the length and character of the person's past and present residence;
 6 (6) the person's record of convictions;
 7 (7) the person's record of appearance at court proceedings;
 8 (8) assets available to the person to meet monetary conditions of
 9 release;
 10 (9) the person's reputation, character, and mental condition;
 11 (10) the effect of the offense on the victim, any threats made to the
 12 victim, and the danger that the person poses to the victim;
 13 (11) any other facts that are relevant to the person's appearance or the
 14 person's danger to the victim, other persons, or the community.

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

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

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

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

24 (B) charged with a felony crime against a person under
 25 AS 11.41, was previously convicted of a felony crime against a person under
 26 AS 11.41 in this state or a similar offense in another jurisdiction, and less than
 27 five years have elapsed between the date of the person's unconditional
 28 discharge on the immediately preceding offense and the commission of the
 29 present offense;

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

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

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

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

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

14 (1) to refrain from

15 (A) consuming alcohol beverages; or

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

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

24 (3) to submit to a breath test when requested by a law enforcement
25 officer;

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

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

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

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

3 (1) to refrain from

4 (A) consuming a controlled substance; 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, a controlled
7 substance or drug paraphernalia;

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 a controlled substance or drug paraphernalia
11 by a peace officer who has reasonable suspicion that the person is violating the terms
12 of the person's release by possessing controlled substances or drug paraphernalia;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) A judicial officer may appoint an individual as a third-party custodian if

1 the proposed custodian

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

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

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

9 (A) understands the duties of custodian and agrees to perform
10 them; the proposed custodian must specifically agree to immediately report in
11 accordance with the terms of the order if the person released has violated a
12 condition of release; and

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

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

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

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

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

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

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

27 (6) the proposed custodian resides out of state; however a nonresident
28 may serve as a custodian if the nonresident resides in the state while serving as
29 custodian.

30 * **Sec. 7.** AS 12.30.027(a) is amended to read:

31 (a) Before ordering release before or after trial, or pending appeal, of a person

1 charged with or convicted of a crime involving domestic violence, the **judicial officer**
 2 [COURT] shall consider the safety of the [ALLEGED] victim or other household
 3 member. To protect the [ALLEGED] victim, household member, **other persons**, and
 4 the **community** [PUBLIC] and to reasonably assure the person's appearance, the
 5 **judicial officer shall impose conditions required under AS 12.30.011, and**
 6 [COURT] may impose [BAIL AND] any of the conditions authorized under
 7 **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and
 8 (11), and any other condition necessary to protect the [ALLEGED] victim, household
 9 member, **other persons**, and the **community** [PUBLIC], and to ensure the appearance
 10 of the person in court, including ordering the person to refrain from the consumption
 11 of alcohol.

12 * **Sec. 8.** AS 12.30.027(b) is amended to read:

13 (b) A **judicial officer** [COURT] may not order or permit a person released
 14 under (a) of this section to return to the residence **or place of employment** of the
 15 [ALLEGED] victim or the residence **or place of employment** of a petitioner who has
 16 a protective order directed to the person and issued or filed under AS 18.66.100 -
 17 18.66.180 **unless**

18 **(1) 20 days have elapsed following the date the person was**
 19 **arrested;**

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

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

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

27 * **Sec. 9.** AS 12.30.030 is repealed and reenacted to read:

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

1 discretion.

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

6 * **Sec. 10.** AS 12.30 is amended by adding a new section to read:

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

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

11 (2) the release is requested because of the

12 (A) death of an immediate family member of the person;

13 (B) birth of the person's child if the defendant executes an
14 affidavit of paternity before the release;

15 (C) person's need for a mental health or substance abuse
16 assessment that the court finds cannot be accommodated in the facility or
17 telephonically; or

18 (D) person's need for a medical or dental examination required
19 for acceptance into a residential treatment facility; and

20 (3) the court solicits information from the Department of Corrections
21 regarding the defendant's conduct while incarcerated and considers that information
22 when making a decision under this subsection.

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

27 * **Sec. 11.** AS 12.30.040 is repealed and reenacted to read:

28 **Sec. 12.30.040. Release before sentence; release after conviction.** (a) Except
29 as provided in (b) of this section, a person who has been convicted of an offense and is
30 awaiting sentence or who has filed an appeal may be released under the provisions of
31 this chapter if the person establishes, by clear and convincing evidence, that the person

1 can be released under conditions that will reasonably assure the appearance of the
2 person and the safety of the victim, other persons, and the community.

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

5 (1) an unclassified or class A felony;

6 (2) a sexual felony;

7 (3) a class B felony if the person has been convicted within the
8 previous 10 years of a felony committed in this state or a similar offense committed in
9 another jurisdiction; or

10 (4) a felony in violation of AS 11.41, and the person has been found
11 guilty but mentally ill.

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

17 * **Sec. 12.** AS 12.30.050 is repealed and reenacted to read:

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

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

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

29 * **Sec. 13.** AS 12.30 is amended by adding a new section to read:

30 **Sec. 12.30.055. Persons appearing on petition to revoke.** A person who is in
31 custody in connection with a petition to revoke probation for a felony crime against a

1 person under AS 11.41 does not have a right to be released under this chapter. A
 2 judicial officer may, however, release the person under the provisions of this chapter,
 3 if it is established by a preponderance of the evidence that the proposed release
 4 conditions will reasonably assure the appearance of the person and the safety of the
 5 victim, other persons, and the community.

6 * **Sec. 14.** AS 12.30.075(a) is amended to read:

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

13 * **Sec. 15.** AS 12.30 is amended by adding a new section to read:

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

16 * **Sec. 16.** AS 12.30.080 is amended by adding new paragraphs to read:

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

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

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

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

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

23 * **Sec. 17.** AS 12.55.015(a) is amended to read:

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

26 (1) impose a

27 (A) fine when authorized by law and as provided in
 28 AS 12.55.035; or

29 (B) [REPEALED]

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

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

4 (4) impose a definite term of continuous imprisonment;

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

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

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

10 (8) suspend imposition of sentence under AS 12.55.085;

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

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

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

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

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

28 * **Sec. 18.** AS 12.55.015 is amended by adding a new subsection to read:

29 (k) Nothing in (a)(13) of this section limits or restricts the authority of a court
30 to order a person to refrain from the consumption of alcohol as a condition of sentence
31 or probation.

1 * **Sec. 19.** AS 12.55.155(c)(12) is amended to read:

2 (12) the defendant was on release under **AS 12.30** [AS 12.30.020 OR
3 12.30.040] for another felony charge or conviction or for a misdemeanor charge or
4 conviction having assault as a necessary element;

5 * **Sec. 20.** AS 12.80.060(g)(2) is amended to read:

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

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

10 (B) under AS 12.25.180;

11 (C) under **AS 11.56.730** [AS 12.30.060]; or

12 (D) under AS 12.70.

13 * **Sec. 21.** AS 18.65.530(a) is amended to read:

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

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

20 (2) committed the crime of violating a protective order in violation of
21 AS 11.56.740;

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

24 * **Sec. 22.** AS 18.66.160(a) is amended to read:

25 (a) **Unless, on the record in court, the person has already been provided a**
26 **copy of the court's order, process** [PROCESS] issued under this chapter shall be
27 promptly served and executed. If process is to be served upon a person believed to be
28 present or residing in a municipality, as defined in AS 29.71.800, or in an
29 unincorporated community, process shall be served by a peace officer of that
30 municipality or unincorporated community who has jurisdiction within the area of
31 service. If a peace officer of the municipality or unincorporated community who has

1 jurisdiction is not available, a superior court, district court, or magistrate may
 2 designate any other peace officer to serve and execute process. A state peace officer
 3 shall serve process in any area that is not within the jurisdiction of a peace officer of a
 4 municipality or unincorporated community. A peace officer shall use every reasonable
 5 means to serve process issued under this chapter. **A judge may not order a peace**
 6 **officer to serve a petition that has been denied by the court.**

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

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

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

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

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

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

23 (2) If

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

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

29 (iii) The arrested person is not represented by counsel,
 30 and

31 (iv) The arrested person has not previously had a bail

1 review, and

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

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

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

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

10 * **Sec. 25.** 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(a), Alaska Rules of
13 Criminal Procedure, is amended to read:

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

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

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

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

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

23 (2) the execution of an appearance bond in a specified amount and the
24 deposit in the registry of the court, in cash [or other security], of a sum not to exceed
25 10 percent of the amount of the bond;

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

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

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

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

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

5 (1) Appearance in court may not be a condition of a performance bond.
6 A court may not order that an appearance bond be concurrent with an
7 appearance bond in a pending case unless the surety who posed the first
8 appearance bond approves.

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

11 (A) the surety waives the requirement for agreement in
12 advance and in writing; or

13 (B) the court, in writing, finds that the change in the
14 condition of bail poses no increase in risk of loss to the surety and the
15 court sets out in writing the reason for finding that there is no increase in
16 the risk of loss to the surety.

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

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

21 (b) **Release Pending Appeal.** When an appeal on the merits is pending, an
22 appeal under AS 12.30.030 [AS 12.30.030(b)] from an order refusing bail pending
23 appeal or imposing conditions of release pending appeal shall be in the form of a
24 motion filed in the merit appeal. The motion must be filed with the clerk of the
25 appellate courts within 30 days after the date of the notice of the order from which
26 review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule
27 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual
28 information relevant to AS 12.30.011(c) [AS 12.30.020(c)], including but not limited
29 to the following:

30 (1) The full name of the appellant; the trial court case number; the
31 offenses of which the appellant was convicted, if applicable; the date of sentencing;

1 and the complete terms of the sentence;

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

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

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

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

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

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

18 (8) Criminal history: criminal convictions within ten years prior to the
19 present arrest; if the appellant has ever forfeited bail, or had release, probation, or
20 parole revoked, the date, the name and location of the court, and a brief description of
21 the circumstances; whether the present offense was committed while the appellant was
22 on bail or other release or on probation or parole; any other criminal charges pending
23 against the appellant at the time [OF] the motion is filed.

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

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

28 (b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court**
29 **may admit the defendant to bail and stay the sentence as provided by law and by**
30 **these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE
31 STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed,

1 if an appeal is taken, by the district judge or magistrate or by the superior court upon
2 such terms as the court deems proper. During appeal the court may require the
3 defendant to deposit the whole or any part of the fine and costs in the registry of the
4 superior court, or to give bond for the payment thereof, or to submit to an examination
5 of assets, and it may make an appropriate order to restrain the defendant from
6 dissipating his or her assets. An order placing the defendant on probation will be
7 stayed if an appeal is taken.

8 * **Sec. 30.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and
9 12.30.060 are repealed.

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

12 APPLICABILITY. (a) AS 11.56.730, enacted in sec. 2 of this Act, applies to acts
13 committed on or after the effective date of this Act.

14 (b) The amendments to AS 12.25.030(b) made by sec. 3 of this Act apply to arrests
15 for violation of conditions of release occurring on or after the effective date of this Act for
16 offenses occurring before, on, or after the effective date of this Act.

17 (c) AS 12.30.006 - 12.30.021, enacted in secs. 4 - 6 of this Act; AS 12.30.030,
18 repealed and reenacted in sec. 9 of this Act; AS 12.30.031, enacted in sec. 10 of this Act;
19 AS 12.30.040, repealed and reenacted in sec. 11 of this Act; AS 12.30.055, enacted in sec. 13
20 of this Act; and AS 12.30.078, enacted in sec. 15 of this Act apply to bail proceedings
21 occurring on and after the effective date of this Act for offenses occurring on or after the
22 effective date of this Act.

23 (d) AS 12.30.050, repealed and reenacted in sec. 12 of this Act, applies to bail
24 proceedings occurring on or after the effective date of this Act for offenses occurring before,
25 on, or after the effective date of this Act.

26 (e) The amendments to AS 12.30.027(a) and (b) made by secs. 7 and 8 of this Act; to
27 AS 12.30.075(a) made by sec. 14 of this Act and to 12.30.080 made by sec. 16 of this Act
28 apply to bail proceedings occurring on or after the effective date of this Act for offenses
29 occurring before, on, or after the effective date of this Act.

30 (f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, made by secs. 23
31 and 24 of this Act apply to offenses occurring on or after the effective date of this Act.

1 (g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec.
2 27 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

3 (h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, made by
4 sec. 29 of this Act applies to convictions occurring on or after the effective date of this Act.

5 * **Sec. 32.** This Act takes effect July 1, 2010.