

HOUSE BILL NO. 295

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/19/18
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to pretrial release procedures; amending Rule 41, Alaska Rule of
2 Criminal Procedure; and providing for an effective date."

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

4 * **Section 1.** AS 12.30.006(b) is amended to read:

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

10 (1) **been charged with**

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

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

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

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

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

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

10 **(2) an out-of-state criminal history that has not been used in**
 11 **determining the person's risk level in the pretrial risk assessment under**
 12 **AS 33.07.**

13 * **Sec. 2.** AS 12.30.011(a) is amended to read:

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

17 (1) on the person's own recognizance;

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

19 (3) upon execution of an unsecured performance bond.

20 * **Sec. 3.** AS 12.30.011(b) is amended to read:

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

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

28 (2) high risk shall be released on the person's own recognizance or
 29 upon execution of an unsecured appearance bond or unsecured performance bond
 30 unless the judicial officer finds on the record that there is clear and convincing
 31 evidence that no nonmonetary conditions of release in combination with the release of

1 the person on the person's own recognizance or upon execution of an unsecured bond
 2 can reasonably ensure the appearance of the person in court and the safety of the
 3 victim, other persons, and the community.

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

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

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

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

19 * **Sec. 5.** AS 12.30.011(g) is amended to read:

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

22 (1) obey all court orders;

23 (2) obey all laws;

24 (3) make all court appearances;

25 (4) maintain contact with the person's pretrial services officer, if one is
 26 appointed by the court, and follow the pretrial services officer's instructions;

27 (5) **if represented,** maintain contact with the person's attorney;

28 (6) notify the person's attorney or, if the person is not represented by
 29 an attorney, the pretrial services officer or the court within 24 hours after a change in
 30 the person's residence.

31 * **Sec. 6.** AS 12.30.011(i) is amended to read:

1 (i) In determining the conditions of release under this chapter, the court shall
2 consider the following:

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

21 * **Sec. 7.** AS 12.30.011 is amended by adding a new subsection to read:

22 (m) If a person charged with an offense has an out-of-state criminal history
23 that has not been used in determining the person's risk level in the pretrial risk
24 assessment under AS 33.07, the court shall impose the least restrictive condition or
25 conditions authorized under this chapter that will reasonably ensure the appearance of
26 the person in court and the safety of the victim, other persons, and the community.

27 * **Sec. 8.** AS 12.30.080 is amended by adding a new paragraph to read:

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

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

3 INDIRECT COURT RULE AMENDMENT. AS 12.30.011, as amended by secs. 2 - 7
4 of this Act, has the effect of changing Rule 41, Alaska Rules of Criminal Procedure, by
5 changing release conditions for certain defendants.

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

8 CONDITIONAL EFFECT. This Act takes effect only if sec. 9 of this Act receives the
9 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
10 Alaska.

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

13 APPLICABILITY. This Act applies to offenses committed on or after the effective
14 date of this Act.

15 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).