

HOUSE BILL NO. 297

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CHENAULT

Introduced: 1/19/18

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to forfeiture of bail or bond for failure to appear; and amending Rule**
2 **41(h), Alaska Rules of Criminal Procedure."**

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

4 * **Section 1.** AS 12.30.011 is amended by adding a new subsection to read:

5 (m) If a person released under this section after execution of an appearance
6 bond fails to appear before a court or judicial officer as required, the judge or
7 magistrate before whom the person released was to appear shall forfeit the bond.

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

10 DIRECT COURT RULE AMENDMENT. Rule 41(h), Alaska Rules of
11 Criminal Procedure, is amended to read:

12 (h) **Appearance and Bail Bonds.**

13 (1) Judgment of Forfeiture. If the person released on bail on the giving
14 or pledging of security fails to appear before a court or a judicial officer as required,

1 the judge or magistrate judge before whom the person released was to appear shall
2 forfeit the security. The clerk may sign the judgment of forfeiture if directed to do so
3 on the record in the particular proceeding by the judge. However, the judgment of
4 forfeiture may not be enforced until a hearing is held pursuant to subparagraph (h)(3)
5 or, if no hearing is requested, until 30 days after the date of notice of the judgment of
6 forfeiture. Nothing in this subparagraph shall interfere with the issuance of a summons
7 or bench warrant for a person who fails to appear as required before a court or judicial
8 officer.

9 (2) Notice of Forfeiture. The clerk shall send notice of the judgment of
10 forfeiture to the defendant, defendant's attorney and the person giving or pledging the
11 security at their last known addresses. The notice must state that a hearing will be held
12 on the forfeiture if timely requested pursuant to subparagraph (h)(3).

13 (3) Hearing. If requested by the defendant or person giving or pledging
14 the security within 30 days of the date of notice of the forfeiture, the court shall hold a
15 hearing to determine whether the defendant's failure to appear was willful. The state,
16 the defendant, the defense attorney, and the person giving or pledging the security
17 have the right to be heard at this hearing. The court shall set aside the judgment of
18 forfeiture if it is proven by a preponderance of the evidence that the failure to appear
19 was not willful. [THE COURT MAY SET ASIDE THE JUDGMENT OF
20 FORFEITURE IF THE COURT CONCLUDES THAT JUSTICE DOES NOT
21 REQUIRE THE ENFORCEMENT OF THE JUDGMENT.] An appeal may be taken
22 from the judgment of forfeiture in the manner of other appeals.

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

30 (5) Exoneration. When the condition of the bond has been satisfied or
31 the forfeiture thereof has been remitted, the court shall exonerate the obligors and

1 release any bail. A surety may be exonerated by a deposit of cash in the amount of the
2 bond or by a timely surrender of the defendant into custody.

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