

CS FOR SENATE BILL NO. 33(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/20/19

Referred: Judiciary, Finance

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

A BILL

FOR AN ACT ENTITLED

"An Act relating to rights of a prisoner after arrest; relating to pretrial release; relating to sentencing; relating to treatment program credit toward service of a sentence of imprisonment; relating to electronic monitoring; amending Rules 38.2 and 45(d), Alaska Rules of Criminal Procedure; and providing for an effective date."

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

*** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that the Alaska Court System make continued efforts to find efficiencies in the criminal justice system and increase the use of contemporaneous two-way video conference for pretrial hearings whenever possible.

*** Sec. 2.** AS 12.25.150(a) is amended to read:

(a) A person arrested shall be taken before a judge or magistrate without unnecessary delay and in any event within **48** [24] hours after arrest, [ABSENT

1 COMPELLING CIRCUMSTANCES,] including Sundays and holidays. [THE
 2 UNAVAILABILITY OF A REPORT PREPARED BY THE PRETRIAL SERVICES
 3 OFFICER UNDER AS 33.07 OR A DELAY IN THE TRANSMITTAL OF THAT
 4 REPORT TO THE PARTIES OR TO THE COURT MAY NOT BE CONSIDERED
 5 A SUFFICIENT COMPELLING CIRCUMSTANCE TO JUSTIFY DELAYING A
 6 HEARING BEYOND 24 HOURS. THE HEARING BEFORE THE JUDGE OR
 7 MAGISTRATE MAY NOT TAKE PLACE MORE THAN 48 HOURS AFTER
 8 ARREST.] This requirement applies to municipal police officers to the same extent as
 9 it does to state troopers.

10 * **Sec. 3.** AS 12.30.006(b) is amended to read:

11 (b) At the first appearance before a judicial officer, a person may be detained
 12 up to 48 hours for the prosecuting authority to demonstrate that release of the person
 13 under AS 12.30.011 would not reasonably ensure the appearance of the person or will
 14 pose a danger to the victim, other persons, or the community, if the person has

15 (1) been charged with an unclassified, class A, class B, or class C
 16 felony; or

17 (2) a criminal conviction or charge outside the state [THAT HAS NOT
 18 BEEN USED IN DETERMINING THE PERSON'S RISK LEVEL IN THE
 19 PRETRIAL RISK ASSESSMENT UNDER AS 33.07].

20 * **Sec. 4.** AS 12.30.006(c) is amended to read:

21 (c) A person who remains in custody 48 hours after appearing before a judicial
 22 officer because of inability to meet the conditions of release shall, upon application, be
 23 entitled to have the conditions reviewed by the judicial officer who imposed them. If
 24 the judicial officer who imposed the conditions of release is not available, any judicial
 25 officer in the judicial district may review the conditions. [UPON REVIEW OF THE
 26 CONDITIONS, THE JUDICIAL OFFICER SHALL REVISE ANY CONDITIONS
 27 OF RELEASE THAT HAVE PREVENTED THE DEFENDANT FROM BEING
 28 RELEASED UNLESS THE JUDICIAL OFFICER FINDS ON THE RECORD THAT
 29 THERE IS CLEAR AND CONVINCING EVIDENCE THAT LESS RESTRICTIVE
 30 RELEASE CONDITIONS CANNOT REASONABLY ENSURE THE

31 (1) APPEARANCE OF THE PERSON IN COURT; AND

(2) SAFETY OF THE VICTIM, OTHER PERSONS, AND THE COMMUNITY.]

* **Sec. 5.** AS 12.30.006(d) is amended to read:

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

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" **does not include** [INCLUDES] the person's inability to post the required bail;

(2) the prosecuting authority and any surety, if applicable, have at least 48 **hours** [HOURS"] written notice before the time set for the review requested under this subsection; the defendant shall notify the surety; and

(3) at least seven days have elapsed between the previous review and the time set for the requested review [; HOWEVER, A PERSON MAY RECEIVE ONLY ONE BAIL REVIEW HEARING SOLELY FOR INABILITY TO PAY].

* **Sec. 6.** AS 12.30.006(f) is amended to read:

(f) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer or a pretrial services officer under **AS 33.05.040(a)(11)** [AS 33.07] may arrest the person without a warrant for violation of the court's order establishing conditions of release.

* **Sec. 7.** AS 12.30.011 is repealed and reenacted to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released

1 on the person's personal recognizance or upon execution of an unsecured appearance
2 bond, on the condition that the person

- 3 (1) obey all court orders and all federal, state, and local laws;
- 4 (2) appear in court when ordered;
- 5 (3) if represented, maintain contact with the person's lawyer; and
- 6 (4) notify the person's lawyer, who shall notify the prosecuting
7 authority and the court, not more than 24 hours after the person changes residence.

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

- 14 (1) require the execution of an appearance bond in a specified amount
15 of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent
16 of the amount of the bond;
- 17 (2) require the execution of a bail bond with sufficient solvent sureties
18 or the deposit of cash;
- 19 (3) require the execution of a performance bond in a specified amount
20 of cash to be deposited in the registry of the court;
- 21 (4) place restrictions on the person's travel, association, or residence;
- 22 (5) order the person to refrain from possessing a deadly weapon on the
23 person or in the person's vehicle or residence;
- 24 (6) require the person to maintain employment or, if unemployed,
25 actively seek employment;
- 26 (7) require the person to notify the person's lawyer and the prosecuting
27 authority within two business days after any change in employment;
- 28 (8) require the person to avoid all contact with a victim, a potential
29 witness, or a codefendant;
- 30 (9) require the person to refrain from the consumption and possession
31 of alcoholic beverages;

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

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

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

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

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

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

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

17 (17) order the person to submit to electronic monitoring administered
 18 by a private organization;

19 (18) order the person to submit to supervision by the pretrial services
 20 office in the Department of Corrections under AS 33.05, which may include the use of
 21 electronic monitoring if determined necessary by the commissioner of corrections;

22 (19) order the person to comply with any other condition that is
 23 reasonably necessary to ensure the appearance of the person and to ensure the safety
 24 of the victim, other persons, and the community; and

25 (20) require the person to comply with a program established under
 26 AS 47.38.020 if the person has been charged with an alcohol-related or substance-
 27 abuse-related offense that is an unclassified felony, a class A felony, a sexual felony,
 28 or a crime involving domestic violence.

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

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

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

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

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

(2) there is a rebuttable presumption that there is a substantial risk that the person will not appear and the person poses a danger to the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, a sexual felony, or a felony under AS 28.35.030 or 28.35.032;

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

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

(D) charged with a crime involving domestic violence, and has

1 been convicted in the previous five years of a crime involving domestic
2 violence in this state or a similar offense in another jurisdiction;

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

6 (e) If the supreme court establishes a schedule of bail amounts or conditions of
7 release for misdemeanor offenses, the schedule must include a condition providing
8 that a correctional facility shall, at the time of release, conduct a chemical test of the
9 breath of a person who has been arrested and who is intoxicated and may detain the
10 person until the test result indicates that the person's breath has less than 0.08 grams of
11 alcohol for each 210 liters of breath or, with the consent of the person, release the
12 person to another person who is willing and able to provide care for the person.

13 * **Sec. 8.** AS 12.30.021(a) is amended to read:

14 (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016,
15 a judicial officer may appoint a third-party custodian if the officer finds [, ON THE
16 RECORD,] that **the appointment will, singly or in combination with other**
17 **conditions.**

18 [(1) PRETRIAL SUPERVISION UNDER AS 33.07 IS NOT
19 AVAILABLE IN THE PERSON'S LOCATION;

20 (2) NO SECURED APPEARANCE OR PERFORMANCE BONDS
21 HAVE BEEN ORDERED; AND

22 (3) NO OTHER CONDITIONS OF RELEASE OR COMBINATION
23 OF CONDITIONS CAN] reasonably ensure the person's appearance and the safety of
24 the victim, other persons, and the community.

25 * **Sec. 9.** AS 12.30.021(c) is amended to read:

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

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

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

31 (3) criminal charges are pending in this state or another jurisdiction

1 against the proposed custodian;

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

4 (5) [THERE IS A REASONABLE PROBABILITY THAT THE
5 STATE WILL CALL] the proposed custodian may be called as a witness in the
6 prosecution of the person;

7 (6) the proposed custodian resides out of state; however, a nonresident
8 may serve as a custodian if the nonresident resides in the state while serving as
9 custodian.

10 * **Sec. 10.** AS 12.55.027(d) is amended to read:

11 (d) A court may not grant credit against a sentence of imprisonment for time
12 spent in a private residence or under electronic monitoring [IF THE PERSON HAS
13 NOT COMMITTED A CRIMINAL OFFENSE WHILE UNDER ELECTRONIC
14 MONITORING AND THE COURT IMPOSES RESTRICTIONS ON THE
15 PERSON'S FREEDOM OF MOVEMENT AND BEHAVIOR WHILE UNDER THE
16 ELECTRONIC MONITORING PROGRAM, INCLUDING REQUIRING THE
17 PERSON TO BE CONFINED TO A RESIDENCE EXCEPT FOR A

18 (1) COURT APPEARANCE;

19 (2) MEETING WITH COUNSEL; OR

20 (3) PERIOD DURING WHICH THE PERSON IS AT A LOCATION
21 ORDERED BY THE COURT FOR THE PURPOSES OF EMPLOYMENT,
22 ATTENDING EDUCATIONAL OR VOCATIONAL TRAINING, PERFORMING
23 COMMUNITY VOLUNTEER WORK, OR ATTENDING A REHABILITATIVE
24 ACTIVITY OR MEDICAL APPOINTMENT].

25 * **Sec. 11.** AS 12.55.027(e) is amended to read:

26 (e) If a defendant intends to claim credit toward a sentence of imprisonment
27 for time spent in a treatment program [OR UNDER ELECTRONIC MONITORING]
28 either as a condition of probation or as a condition of bail release after a petition to
29 revoke probation has been filed, the defendant shall file notice with the court and the
30 prosecutor 10 days before the disposition hearing. The notice shall include the amount
31 of time the defendant is claiming. The defendant must prove by a preponderance of the

evidence that the credit claimed meets the requirements of this section. A court may not consider, except for good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

* **Sec. 12.** AS 12.55.027(f) is amended to read:

(f) To qualify as a treatment program under this section, a program must

(1) be intended to address criminogenic traits or behaviors;

(2) provide measures of progress or completion; and

(3) require notification to the **prosecuting authority**, pretrial services **officer**, [OFFICE] or probation officer if the person is discharged from the program for noncompliance.

* **Sec. 13.** AS 12.55.027 is amended by adding a new subsection to read:

(i) A court granting credit against a sentence of imprisonment under (a) of this section may grant credit of not more than 180 days against the total term of imprisonment imposed.

* **Sec. 14.** AS 12.70.130 is amended to read:

Sec. 12.70.130. Arrest without warrant. The arrest of a person may also be lawfully made by a peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, but when arrested the accused must be taken before a judge or magistrate without unnecessary delay and, in any event, within **48** [24] hours after arrest, [ABSENT COMPELLING CIRCUMSTANCES,] including Sundays and holidays, and complaint shall be made against the accused under oath setting out the ground for the arrest as in AS 12.70.120. [THE HEARING BEFORE THE JUDGE OR MAGISTRATE MAY NOT TAKE PLACE MORE THAN 48 HOURS AFTER ARREST.] Thereafter the answer of the accused shall be heard as if the accused had been arrested on a warrant.

* **Sec. 15.** AS 33.05.010 is amended to read:

Sec. 33.05.010. Powers of commissioner. The commissioner shall administer a probation system, [AND] enforce the probation laws in the superior court, **and provide supervision of defendants released while awaiting trial as ordered by the**

1 court.

2 * **Sec. 16.** AS 33.05.020 is amended by adding new subsections to read:

3 (i) The commissioner shall appoint and make available to the superior court
4 and district court qualified pretrial services officers under AS 33.05.040(11) and
5 assign pretrial services officers to each judicial district for the supervision of
6 defendants released while awaiting trial as ordered by the court.

7 (j) The commissioner may, in accordance with AS 36.30, procure and enter
8 into agreements or contracts for the supervision of defendants on electronic
9 monitoring during the pretrial period.

10 * **Sec. 17.** AS 33.05.030(a) is amended to read:

11 (a) All probation officers made available to the courts under this chapter shall
12 be officers of the superior and district courts [COURT] and subject to the authority
13 of the superior and district courts [COURT].

14 * **Sec. 18.** AS 33.05.040(a) is amended to read:

15 (a) A probation officer shall

16 (1) furnish to each probationer under the supervision of the officer a
17 written statement of the conditions of probation and shall instruct the probationer
18 regarding the same;

19 (2) keep informed concerning the conduct and condition of each
20 probationer under the supervision of the officer and shall report on the probationer to
21 the court placing that person on probation;

22 (3) use all suitable methods, not inconsistent with the conditions
23 imposed by the court, to aid probationers and to bring about improvements in their
24 conduct and condition;

25 (4) keep records of the probation work, including administrative
26 sanctions and incentives the probation officer imposes under AS 33.05.020(g), keep
27 accurate and complete accounts of all money collected from persons under the
28 supervision of the officer, give receipts for money collected and make at least monthly
29 returns of it, make the reports to the court and the commissioner required by them, and
30 perform other duties the court may direct;

31 (5) perform duties with respect to persons on parole as the

commissioner shall request, and in that service shall be termed a parole officer;

(6) use administrative sanctions and incentives developed under AS 33.05.020(g) to respond to a probationer's negative and positive behavior, including responses to technical violations of conditions of probation, in a way that is intended to interrupt negative behavior in a swift, certain, and proportional manner and support progress with a recognition of positive behavior;

(7) upon determining that a probationer under the supervision of the officer meets the requirements of AS 12.55.090(g), recommend to the court as soon as practicable that probation be terminated and the probationer be discharged from probation;

(8) for each probationer who owes restitution and who is under the supervision of the officer, create a restitution payment schedule based on the probationer's income and ability to pay if the court has not already set a restitution payment schedule;

(9) accommodate the diligent efforts of each probationer to secure and maintain steady employment or to participate in educational courses or training programs when prescribing the times at which a probationer shall report;

(10) permit each probationer to travel in the state to make diligent efforts to secure and maintain steady employment or to participate in educational courses or training programs if the travel is not inconsistent with other terms and conditions of probation;

(11) perform duties with respect to persons on pretrial release as the commissioner requests; in that service, the probation officer shall be considered to be acting as a pretrial services officer for the purposes of AS 33.05.045.

* Sec. 19. AS 33.05 is amended by adding a new section to read:

Sec. 33.05.045. Duties of probation officers when acting as pretrial services officers. A probation officer acting as a pretrial services officer shall

(1) upon order of the court and request by the commissioner, supervise a defendant released while awaiting trial, which may include the supervision of electronic monitoring;

(2) if the probation officer acting as a pretrial services officer has probable cause to believe the defendant has committed an offense under AS 11.56.730 or 11.56.757 or has violated the defendant's release conditions, file a complaint with the court and

(A) arrest, with or without a warrant, a defendant who has been released while awaiting trial; or

(B) request the court to issue a warrant related to any violation of the defendant's release conditions;

(3) refer interested defendants for substance abuse screening, assessment, and treatment on a voluntary basis and assist any defendant whose offense or criminal history identified a dependency on, abuse of, or addiction to alcohol or controlled substances with accessing and obtaining appropriate treatment in the community to address those needs.

* **Sec. 20.** AS 33.16.190 is amended to read:

Sec. 33.16.190. Authority of parole [, PRETRIAL SERVICES,] and probation officers. An officer appointed by the commissioner under AS 33.05.020(a) [, AS 33.07,] or this chapter [,] may discharge duties under AS 33.05 [, AS 33.07,] or this chapter.

* **Sec. 21.** AS 44.19.645(g) is amended to read:

(g) The Department of Corrections shall report quarterly to the working group authorized in (b)(3) of this section. The report shall include the following information:

(1) data on pretrial decision making and outcomes, including information on pretrial detainees admitted for a new criminal charge; detainees released at any point before case resolution; time spent detained before first release or case resolution [; PRETRIAL DEFENDANT RISK LEVEL AND CHARGE; PRETRIAL RELEASE RECOMMENDATIONS MADE BY PRETRIAL SERVICES OFFICERS]; pretrial conditions imposed on pretrial detainees by judicial officers, including amount of bail, and supervision conditions; and information on pretrial outcomes, including whether or not the defendant appeared in court or was re-arrested during the pretrial period;

(2) data on offenders admitted to the Department of Corrections for a

1 new criminal conviction, including the offense type, number of prior felony
2 convictions, sentence length, and length of stay;

3 (3) data on the population of the Department of Corrections, using a
4 one-day snapshot on the first day of the first month of each quarter, broken down by
5 type of admission, offense type, and risk level;

6 (4) data on offenders on probation supervised by the Department of
7 Corrections, including the total number of offenders supervised using a one-day
8 snapshot on the first month of each quarter; admissions to probation; assignments to a
9 program under AS 33.05.020(f); probation sentence length; time served on the
10 sentence; whether probation was successfully completed, any new convictions for a
11 felony offense, and any sentences to a term of imprisonment while on probation;

12 (5) data on parole, including the number of offenders supervised on
13 parole, using a one-day snapshot on the first month of each quarter; the number of
14 parole hearings; the parole grant rate and number of parolees released on discretionary
15 and special medical parole; and information on parolees, including time spent on
16 parole, whether parole was successfully completed, any new convictions for a new
17 felony offense, and any sentences to a term of imprisonment while on parole;

18 (6) data on the implementation of policies from the 2015 justice
19 reinvestment report, including the number and percentage of offenders who earn
20 compliance credits under AS 33.05.020(h) or AS 33.16.270 in one or more months,
21 and the total amount of credits earned; the average number of sanctions issued under
22 AS 33.05.020(g) before a petition to revoke probation or parole is filed; and the most
23 common violations of probation or parole; and

24 (7) data on probation and parole revocations, including information on
25 probationers and parolees admitted for a supervision violation pre-case and post-case
26 resolution; probationers and parolees admitted solely for a technical violation;
27 probationers and parolees admitted for a new arrest; the number of previous
28 revocations on the current sentence, if any; the length of time held pre-case resolution;
29 the length of time to case resolution; and the length of stay.

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

1 DIRECT COURT RULE AMENDMENT. Rule 38.2(a), Alaska Rules of
2 Criminal Procedure, is amended to read:

3 (a) The Administrative Director of the Alaska Court System, after consultation
4 with the presiding judge, Public Defender Agency, and Attorney General's Office,
5 may enter into agreements with the Department of Public Safety and Department of
6 Corrections which approve systems allowing judges to provide for the appearance by a
7 defendant at certain criminal proceedings by way of **contemporaneous two-way**
8 **video conference** [TELEVISION] equipment in lieu of the physical presence of the
9 defendant in the courtroom. Such an agreement must provide for a procedure by which
10 the defendant may confer with the defendant's attorney in private.

11 * **Sec. 23.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 DIRECT COURT RULE AMENDMENT. Rule 38.2(b), Alaska Rules of
14 Criminal Procedure, is amended to read:

15 (b) In those court locations in which a **contemporaneous two-way video**
16 **conference** [TELEVISION] system has been approved by the supreme court and has
17 been installed, in custody defendants **may** [SHALL] appear by way of
18 **contemporaneous two-way video conference** [TELEVISION] for **all hearings**
19 **except for trial and sentencings** [ARRAIGNMENT, PLEAS, AND NON-
20 EVIDENTIARY BAIL REVIEWS IN TRAFFIC AND MISDEMEANOR CASES;
21 AND INITIAL APPEARANCE HEARINGS, NON-EVIDENTIARY BAIL
22 REVIEWS, AND NOT GUILTY PLEA ARRAIGNMENTS IN FELONY CASES],
23 unless otherwise ordered for cause stated by the presiding judge. **However, with**
24 [WITH] the defendant's consent, sentencings may be done by way of
25 **contemporaneous two-way video conference** [TELEVISION] in traffic and
26 misdemeanor cases.

27 In any particular case, the trial court may order that the defendant be
28 transported to court for court proceedings if the trial judge finds that the defendant's
29 rights would be prejudiced by use of the system.

30 * **Sec. 24.** The uncoded law of the State of Alaska is amended by adding a new section to
31 read:

1 DIRECT COURT RULE AMENDMENT. Rule 45(d), Alaska Rules of
2 Criminal Procedure, is amended to read:

3 **(d) Excluded Periods.** The following periods shall be excluded in computing
4 the time for trial:

5 (1) The period of delay resulting from other proceedings concerning
6 the defendant, including but not limited to motions to dismiss or suppress,
7 examinations and hearings on competency, the period during which the defendant is
8 incompetent to stand trial, interlocutory appeals, and trial of other charges. No pretrial
9 motion shall be held under advisement for more than 30 days and any time longer than
10 30 days shall not be considered as an excluded period.

11 (2) The period of delay resulting from an adjournment or continuance
12 granted at the timely request or with the consent of the defendant or [AND] the
13 defendant's counsel. The court shall grant such a continuance only if it is satisfied that
14 the postponement is in the interest of justice, taking into account the public interest in
15 the prompt disposition of criminal offenses, and after consideration of the interests of
16 the crime victim, if known, as provided in (h) of this rule. A defendant without
17 counsel shall not be deemed to have consented to a continuance unless the defendant
18 has been advised by the court of the right to a speedy trial under this rule and of the
19 effect of consent.

20 (3) The period of delay resulting from a continuance granted at the
21 timely request of the prosecution, if:

22 (A) The continuance is granted because of the unavailability of
23 evidence material to the state's case, when the prosecuting attorney has
24 exercised due diligence to obtain such evidence and there are reasonable
25 grounds to believe that such evidence will be available at the later date; or

26 (B) The continuance is granted to allow the prosecuting
27 attorney in a felony case additional time to prepare the state's case and
28 additional time is justified because of the exceptional complexity of the
29 particular case.

30 (4) The period of delay resulting from the absence or unavailability of
31 the defendant. A defendant should be considered absent whenever the defendant's

1 whereabouts are unknown and in addition the defendant is attempting to avoid
 2 apprehension or prosecution or the defendant's whereabouts cannot be determined by
 3 due diligence. A defendant should be considered unavailable whenever the defendant's
 4 whereabouts are known but the defendant's presence for trial cannot be obtained or the
 5 defendant resists being returned to the state for trial.

6 (5) A reasonable period of delay when the defendant is joined for trial
 7 with a codefendant as to whom the time for trial has not run and there is good cause
 8 for not granting a severance. In all other cases, the defendant shall be granted a
 9 severance in order that the defendant may be tried within the time limits applicable to
 10 the defendant.

11 (6) The period of delay resulting from detention of the defendant in
 12 another jurisdiction provided the prosecuting attorney has been diligent and has made
 13 reasonable efforts to obtain the presence of the defendant for trial. When the
 14 prosecution is unable to obtain the presence of the defendant in detention, and seeks to
 15 exclude the period of detention, the prosecution shall cause a detainer to be filed with
 16 the official having custody of the defendant and request the official to advise the
 17 defendant of the detainer and to inform the defendant of the defendant's rights under
 18 this rule.

19 (7) Other periods of delay for good cause.

20 * **Sec. 25.** AS 12.55.027(g); AS 33.07.010, 33.07.020, 33.07.030, 33.07.040, and 33.07.090
 21 are repealed.

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

24 **APPLICABILITY.** (a) The following sections apply to offenses committed on or after
 25 the effective date of those sections:

- 26 (1) AS 12.25.150(a), as amended by sec. 2 of this Act;
- 27 (2) AS 12.30.006(b), as amended by sec. 3 of this Act;
- 28 (3) AS 12.30.006(c), as amended by sec. 4 of this Act;
- 29 (4) AS 12.30.006(d), as amended by sec. 5 of this Act;
- 30 (5) AS 12.30.006(f), as amended by sec. 6 of this Act;
- 31 (6) AS 12.30.011, as repealed and reenacted by sec. 7 of this Act;

- (7) AS 12.30.021(a), as amended by sec. 8 of this Act;
- (8) AS 12.30.021(c), as amended by sec. 9 of this Act;
- (9) AS 12.70.130, as amended by sec. 14 of this Act;
- (10) AS 33.05.010, as amended by sec. 15 of this Act;
- (11) AS 33.05.020(i) and (j), enacted by sec. 16 of this Act;
- (12) AS 33.05.030(a), as amended by sec. 17 of this Act;
- (13) AS 33.05.040, as amended by sec. 18 of this Act; and
- (14) AS 33.05.045, enacted by sec. 19 of this Act.

(b) The following sections apply to sentences imposed on or after the effective date of those sections for conduct occurring on or after the effective date of those sections:

- (1) AS 12.55.027(d), as amended by sec. 10 of this Act;
- (2) AS 12.55.027(e), as amended by sec. 11 of this Act;
- (3) AS 12.55.027(f), as amended by sec. 12 of this Act; and
- (4) AS 12.55.027(i), enacted by sec. 13 of this Act.

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

TRANSITION. Probation officers acting as pretrial services officers under AS 33.05.045, enacted by sec. 19 of this Act, shall supervise defendants in accordance with orders for pretrial services issued under former AS 12.30.006, 12.30.021, and AS 33.07.

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

CONDITIONAL EFFECT. Sections 22 - 24 of this Act take effect only if secs. 22 - 24 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 29.** This Act takes effect July 1, 2019.